

51 29 36 No. 14741

United States
Court of Appeals
for the Ninth Circuit.

WILMA URCH COLVILLE, Executrix of the
Last Will and Testament of Charles J. Col-
ville, Deceased,

Appellant,

vs.

ISABELLE C. KOCH, Individually and as Ad-
ministratrix of the Estate of Edward Cebrian,
Deceased,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

NOV - 1 1955

No. 14741

United States
Court of Appeals
for the Ninth Circuit.

WILMA URCH COLVILLE, Executrix of the
Last Will and Testament of Charles J. Col-
ville, Deceased,

Appellant,

vs.

ISABELLE C. KOCH, Individually and as Ad-
ministratrix of the Estate of Edward Cebrian,
Deceased,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	8
Attorneys, Names and Addresses of	1
Certificate of Clerk to Record on Appeal	116
Complaint	3
Ex. A—Promissory Note	7
Findings of Fact and Conclusions of Law	22
Judgment	31
Notice of Appeal	32
Order for Judgment in Favor of Defendant	21
Stipulation Re Record on Appeal	119
Transcript of Proceedings	33
Witnesses:	
Cebrian, Ralph	
—direct	52, 68
—cross	73
Colville, Wilma Urch	
—direct	45
—cross	47
Koch, Edwin	
—direct	96
—cross	112

NAMES AND ADDRESSES OF ATTORNEYS

CARL HOPPE, ESQ.,
901 Crocker Bldg.,
San Francisco., Calif.,

Attorney for Plaintiff and Appellant.

CHARLES D. SOOY, ESQ.,
Mills Bldg.,
San Francisco., Calif.,

Attorneys for Defendant and Appellee.

In the United States District Court for the
Northern District of California, Southern Division
Civil Action No. 32020

CHARLES J. COLVILLE,

Plaintiff,

vs.

ISABELLE C. KOCH, Individually and as Ad-
ministratrix of the Estate of Edward Cebrian,
Deceased,

Defendant.

COMPLAINT

1. Plaintiff is a citizen of the Dominion of Canada and defendant is a citizen of the State of California. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

2. On November 15, 1932, one Edward Cebrian, now deceased, executed and delivered to one John S. Barbee, now deceased, a promissory note, a copy of which is hereby annexed as Exhibit A, whereby Edward Cebrian promised to pay to the order of John S. Barbee six months after date the sum of \$10,276.92 with interest at the rate of six per cent per annum from date until paid, without defalcation, interest payable at maturity and thereafter semi-annually until paid in full.

3. On or about May 15, 1933, said John S. Barbee assigned said promissory note to Van-Meter

Terrell Feed Company, a sole proprietorship, of which one Baylor Van-Meter was the sole owner.

4. On or about June 6, 1945, said Baylor Van-Meter died at Lexington, Kentucky. On or about June 16, 1945, First National Bank and Trust Company of Lexington, Kentucky, was duly appointed executor of his estate and on or about August 24, 1945, First National Bank and Trust Company of Lexington, Kentucky, was duly appointed trustee of the estate of Baylor Van-Meter, deceased.

5. On or about May 24, 1950, said First National Bank and Trust Company, as executor and trustee of the estate of Baylor Van-Meter, deceased, duly assigned said promissory note to Charles J. Colville, the plaintiff in this action.

6. On or about June 6, 1944, said Edward Cebrian died in the County of Los Angeles and State of California.

7. At the date of his death, said Edward Cebrian owed to said Baylor Van-Meter the amount of said note with interest at the rate of 6% per annum from November 15, 1932, compounded semi-annually. No one has ever paid the amount of said note and interest aforesaid to said Baylor Van-Meter or to his successors in title; and the amount of said note and interest aforesaid is now due and owing to plaintiff.

8. At the date of his death, said Edward Cebrian was a resident of the County of Los Angeles, State

of California, and he left an estate in said County and elsewhere in the State of California.

9. Immediately after the death of Edward Cebrian, the defendant, Isabelle C. Koch, wrongfully and fraudulently inter-meddled with the proper probate of the estate of Edward Cebrian and fraudulently and wrongfully retained, assumed and obtained possession and control of all of the property owned by said Edward Cebrian at the date of his death.

10. More specifically, on or about February 9, 1945, the defendant, Isabelle C. Koch, executed a petition for letters of administration in the matter of the estate of Edward Cebrian, and caused said petition to be filed in the Superior Court for Los Angeles County on or about February 20, 1945, under file 240,761. The defendant, Isabelle C. Koch, failed to deliver to the jurisdiction of the Superior Court of Los Angeles County any of the property then in her possession or thereafter coming into her possession, belonging to the estate of said Edward Cebrian. Indeed, defendant, Isabelle C. Koch, failed to prosecute said petition with diligence and permitted her petition to go off calendar.

11. On the contrary and contemporaneously with the execution and filing of said petition for administration, and at all times thereafter, said defendant fraudulently concealed the existance of the assets of said Edward Cebrian and fraudulently inter-meddled with the jurisdiction of the Los Angeles

Superior Court over such assests. More specifically, on or about February 9, 1945, said defendant, Isabelle C. Koch, executed a second petition for administration of the estate of said Edward Cebrian in which she falsely and fraudulently represented that said Edward Cebrian was a resident of the City and County of San Francisco, wheareas she knew the fact to be that said Edward Cebrian was a resident of the County of Los Angeles at the time of his death. Thereafter, said defendant, Isabelle C. Koch, caused said false petition to be filed in the Superior Court for the City and County of San Francisco as file No. 98563. The Superior Court for the City and County of San Francisco relied upon the fraudulent representations which defendant Isabelle C. Koch made as aforesaid, and erroneously appointed defendant Isabelle C. Koch, administratrix of the estate of Edward Cebrian, deceased, and issued letters of administration to her. Defendant Isabelle C. Koch, administratix of the estate of Edward Cebrian, deceased, immediately and wrongfully assumed possession and control of all of the property owned by said Edward Cebrian at the date of his death.

12. The aforementioned acts of the defendant, Isabelle C. Koch, have deprived the plaintiff and his predecessors in interest of knowledge of the existence of assets owned by Edward Cebrian and have deprived plaintiff and his predecessors of their right to file claims in the matter of the proper administration of the estate of Edward Cebrian, deceased.

13. The plaintiff's predecessors in interest did not learn of the aforementioned acts of fraudulent concealment and inter-meddling until after May 20, 1950.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$10,276.92 with interest at the rate of six percent per annum from November 15, 1932, compounded semi-annually, and costs.

TOWNSEND, TOWNSEND &
HOPPE,

Of Counsel for Plaintiff.

/s/ CARL HOPPE,

Attorney for Plaintiff.

EXHIBIT A

\$10,276.92—

San Francisco, California, November 15, 1932.
Six Months After Date, for value received, I promise to pay to the order of John S. Barbee, of Lexington, Kentucky, the sum of Ten Thousand, Two Hundred Seventy-six and 92/100 dollars (\$10,276.92), with interest at the rate of six percent per annum from date until paid, without defalcation, interest payable at maturity, and thereafter semi-annually until paid in full, this note negotiable and payable at 200 Trust Building, Lexington, Kentucky. The makers and endorsers of

this note and all parties hereto waive presentment thereof for payment, notice of non-payment, protest and notice of protest and dishonor, and diligence in bringing suit against any and all parties hereto, including makers and endorsers, and all defenses to the payment thereof, and I guarantee payment thereof in the hands of bona fide holders.

/s/ EDWARD CEBRIAN.

[Endorsed]: Filed November 6, 1952.

[Title of District Court and Cause.]

ANSWER

Comes Now defendant Isabelle C. Koch, individually and as Administratrix of the Estate of Edward Cebrian, alias, deceased, and in answer to the complaint of plaintiff, Charles J. Colville, on file herein, admits, denies and avers as follows:

I.

Defendant having no information or belief upon the allegation set forth in paragraph I of plaintiff's complaint that he is a citizen of the Dominion of Canada, sufficient to enable her to answer, denies such allegation. Defendant avers that she is a citizen of the United States of America and a resident of the City and County of San Francisco, State of California, and admits that the amount in controversy, exclusive of interest and costs, exceeds

Three Thousand Dollars (\$3,000.00). Defendant avers that plaintiff is now and for several years immediately preceding the commencement of this action has been a resident of the County of Los Angeles, State of California, and is the owner of the real property at 10753 Lindbrook Drive, West Los Angeles, California, wherein he maintains his principal residence.

II.

Defendant having no information or belief upon the allegations set forth in paragraph 2 of plaintiff's complaint sufficient to enable her to answer, she denies each and every allegation therein contained, except that she admits that Edward Cebrian is now deceased.

III.

Defendant having no information or belief upon the allegations set forth in paragraph 3 of plaintiff's complaint sufficient to enable her to answer, denies that on or about May 15, 1933, or on any other date, John S. Barbee, or anyone else, assigned a promissory note of Edward Cebrian to Van Meter-Terrell Feed Company, a sole proprietorship, or that one Baylor Van Meter was the sole owner of said Van Meter-Terrell Feed Company. Defendant avers that the Van Meter-Terrell Feed Company was a Kentucky corporation and not a sole-proprietorship, as alleged in plaintiff's complaint.

IV.

Defendant having no information or belief upon the allegations of paragraph 4 of plaintiff's com-

plaint sufficient to enable her to answer, denies each and every and all and singular the allegations therein contained.

V.

Defendant having no information or belief upon the allegations of paragraph 5 of plaintiff's complaint sufficient to enable her to answer, denies each and every and all and singular the allegations therein contained. Defendant denies that First National Bank and Trust Company of Lexington, Kentucky, was the owner of the alleged promissory note of Edward Cebrian on May 24, 1950, or at any other time, or at all, either as executor or as trustee of the estate of Baylor Van Meter or in any other capacity. Defendant denies that plaintiff, Charles J. Colville, acquired any title or ownership by reason of any alleged or purported assignment to him by First National Bank and Trust Company of Lexington, Kentucky, or otherwise.

VI.

Defendant admits the allegations contained in paragraph 6, of the said complaint.

VII.

Denies that at the date of his death on June 6, 1944, or at any other time, Edward Cebrian owed to Baylor Van Meter the amount of the said note, Exhibit "A" attached to plaintiff's complaint, or any interest thereon. Denies that the amount of said note or any interest thereon is now due or owing to plaintiff. Defendant, having no infor-

mation or belief upon the allegation that no one has ever paid the amount of said note and interest to Baylor Van Meter or to his successors in title, sufficient to enable her to answer, denies said allegation. Defendant denies that Baylor Van Meter was ever the owner of said promissory note.

VIII.

Defendant denies that Edward Cebrian was a resident of the County of Los Angeles, State of California, at the time of his death, but avers that on the contrary, he was living in Los Angeles solely by reason of his employment with the Office of Censorship; that he had been raised in San Francisco; that he considered San Francisco as his home; that he frequently requested defendant to make further and larger advances to him to enable him to give up his employment in Los Angeles and return to San Francisco; that he maintained a room in the Cebrian family home at 1801 Octavia Street in the City and County of San Francisco, until it was sold following the death of Edward Cebrian's father, John C. Cebrian; that defendant, having advanced many thousands of dollars to her brother, Edward Cebrian, towards his support and in a fruitless attempt to preserve and recover his interest in Cuyama Rancho, was unable and unwilling to finance his return to San Francisco and undertake his full support; that when the family home at 1801 Octavia Street was transferred by Ralph Cebrian, brother of Edward Ce-

brian, Edward Cebrian requested that Ralph Cebrian remove Edward's personal effects and store them in his, Ralph's home in San Francisco until such time as Edward Cebrian could return to San Francisco and reestablish himself here; that Edward Cebrian asked defendant to locate a room or a small apartment in San Francisco for him, since he could not afford to resume his residence at the Palace Hotel, where he last resided in San Francisco, but that defendant was unable to find any quarters for him, due to the war time conditions of full occupancy.

IX.

Defendant denies that immediately after the death of Edward Cebrian, or at any other time, or at all, she wrongfully, or fraudulently intermeddled with the proper probate of the Estate of Edward Cebrian, or that she fraudulently or wrongfully obtained possession or control of the property or Estate of Edward Cebrian. Defendant avers that on February 9, 1945, she executed a petition for letters of administration of the Estate of Edward Cebrian, and caused said petition to be filed in the Superior Court of the State of California, in and for the City and County of San Francisco, on February 10, 1945, probate proceeding No. 98563. Defendant avers that on or about February 11, 1945, she caused notice of the hearing of her said petition for letters of administration to be given for the time and in the manner required by law and Section 441, of the Probate Code of the State of California. Defendant avers further

that she alleged in her said petition that Edward Cebrian died in the County of Los Angeles, State of California, but that he was at the time of his death a resident of the City and County of San Francisco, State of California. Defendant avers further that on February 25, 1945, the Superior Court of the State of California, in and for the City and County of San Francisco, found that Edward Cebrian had died and was a resident of the City and County of San Francisco, State of California, at the time of his death, and appointed defendant as administratrix of his estate; that at all times since February 25, 1945, defendant has retained possession and control of the real and personal property of the Estate of Edward Cebrian, deceased, solely by virtue of her fiduciary capacity as administratrix of the estate of said decedent, and not otherwise, and at all such times she has administered said estate, made sales and leases, paid allowed and compromised claims, under and pursuant to the orders of the Superior Court of the State of California, in and for the City and County of San Francisco, which has had exclusive jurisdiction of the Estate of Edward Cebrian, alias, deceased.

X.

Defendant admits that after filing a petition for letters of administration in the Superior Court of the State of California, in and for the City and County of San Francisco, and before any hearing was had upon said petition, she filed a petition for letters of administration in the Superior Court

of the State of California, in and for the County of Los Angeles, on February 20, 1945. Defendant avers she caused notice of the hearing of said Los Angeles petition to be given in the manner and for the time required by law and by Section 441 of the Probate Code of California. Defendant avers further that the only reason for filing said petition in Los Angeles County was to avoid delay in the event the San Francisco Superior Court should decide that Edward Cebrian was a resident of the County of Los Angeles, rather than the City and County of San Francisco, as she alleged, and if so, it would necessarily follow that it would have decided it had no jurisdiction to appoint defendant as administratrix. In this event, defendant then could and would have proceeded with the probate proceedings instituted by her in Los Angeles County solely to meet that contingency. However, since on February 25, 1945, the San Francisco Superior Court determined that Edward Cebrian had been a resident of the City and County of San Francisco at the time of his death, and appointed defendant as his administratrix, it had and assumed exclusive jurisdiction of the probate administration of his estate and nothing either defendant or the Los Angeles Superior Court could have done would have given any force or vitality to the proceeding pending there. Accordingly, it was abandoned.

XI.

Defendant denies that she concealed, fraudulently or otherwise, the existence of the assets of the

said Edward Cebrian, or that she has intermeddled, fraudulently or otherwise, with the jurisdiction of the Los Angeles Superior Court over said assets; defendant avers in this connection that she has inventoried and accounted for all of the assets of the Edward Cebrian estate in the probate proceeding pending in the San Francisco Superior Court and that the Los Angeles Superior Court never had or acquired, nor does it now have, any jurisdiction over said assets. Defendant denies that the petition filed by defendant in San Francisco was a "second" petition, but avers that it was the first petition signed and filed. Defendant denies that her allegation in said San Francisco petition for letters of administration that Edward Cebrian was a resident of the City and County of San Francisco, State of California, at the time of his death was either false or fraudulent but avers that it was true and correct according to the best information and belief possessed by defendant then and now. Defendant denies that she knew in February, 1945, or at any other time, that Edward Cebrian was a resident of the County of Los Angeles at the time of his death. Defendant avers that such alleged Los Angeles residence was not the fact. Denies that defendant made false or fraudulent allegations of fact to the San Francisco Superior Court in her petition for probate or by any other pleading or evidence; denies that said San Francisco Superior Court relied upon any alleged false or fraudulent representations; denies that said San Francisco

Superior Court erred in appointing defendant as administratrix of the Estate of Edward Cebrian, deceased. Defendant denies that she ever wrongfully assumed possession or control of the property Edward Cebrian.

XII.

Denies that any acts of defendant have deprived plaintiff, or his predecessors in interest, of any knowledge of the existence of assets owned by Edward Cebrian, or have deprived plaintiff, or his predecessors, of their right to file claims in the matter of the Estate of Edward Cebrian, deceased, but on the contrary defendant alleges that plaintiff admitted to her in Los Angeles in November, 1950, that he had carefully examined all the public records pertaining to Edward Cebrian, including a petition in bankruptcy which Edward Cebrian had filed in 1934, the San Francisco probate proceedings, the Los Angeles petition for probate, the proceedings in a San Francisco Superior Court action entitled, Harting vs. Edward Cebrian, the official records of Santa Barbara County and other counties; that he claimed to be the owner of an old claim against Edward Cebrian but that he was going to use it as a wedge to reopen the old bankruptcy proceeding and enjoy the great wealth which had been realized through the Cuyama Valley oil discoveries in 1948. That these facts show that none of the actions of defendant, either alleged or admitted, had any effect whatsoever on either plaintiff or his predecessors, since they were

fully informed of all the facts, as alleged in his complaint. Plaintiff admitted further that he had enjoyed a great success in discovering flaws in title and using them as a basis for litigation and claims and he cited one instance whereby he had recovered a substantial sum from Shell Oil Company. In May, 1950, and prior to that time for all that appears from the complaint, plaintiff and his alleged predecessors in title had made no inquiry and were unaware of any actions or proceedings in connection with the Edward Cebrian estate and the probate thereof. However, defendant avers that plaintiff and his predecessors had constructive notice in 1945, of the petition for letters of administration filed and heard in San Francisco on February 25, 1945.

XII.

Defendant denies that neither plaintiff or his predecessors in title had any information prior to May, 1950, about the death of Edward Cebrian and the probate of his estate in San Francisco, but avers on the contrary that plaintiff had actual knowledge of these events and proceedings many months prior to May, 1950, and that he had in fact ordered and received photostat copies of the files, papers, records and proceedings in the matters of the estates of John C. Cebrian, deceased, father of Edward Cebrian, and of the matter of the estate of Edward Cebrian, deceased, prior to May, 1950. Defendant is informed and believes and, therefore, alleges that plaintiff had actual knowledge of the fact that Edward Cebrian had died in Los Angeles

on June 6, 1944, and that his estate was being probated in the City and County of San Francisco, State of California, more than three years prior to November 6, 1952, the date the complaint herein was filed.

XIII.

Defendant avers that the complaint of plaintiff fails to state a claim against defendant upon which relief can be granted.

And for a Second and Separate and Distinct Defense to plaintiff's cause of action, defendant alleges:

I.

That on February 26, 1945, she, as administratrix of the Estate of Edward Cebrian, alias, deceased, caused Notice to Creditors to be published in *The Recorder*, a newspaper of general circulation published in the City and County of San Francisco, State of California, in the matter of the Estate of Edward Cebrian, alias, deceased, probate proceeding No. 98563, for the time and in the manner provided by law and Section 700 of the Probate Code of California. That the six months period of time to file claims expired August 26, 1945. That no claim was ever filed or presented by plaintiff or any one else upon the promissory note of Edward Cebrian dated November 15, 1932, referred to in plaintiff's complaint, as required by the Probate Code of California.

And for a Third and Separate and Distinct Defense to plaintiff's alleged cause of action, defendant avers:

I.

That the plaintiff's alleged cause of action is barred by the provisions of Section 337(1) of the Code of Civil Procedure of the State of California.

II.

That the plaintiff's alleged cause of action is barred by the provisions of Section 361 of the Code of Civil Procedure of the State of California.

III.

That the plaintiff's alleged cause of action is barred by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

IV.

That the plaintiff's alleged cause of action is barred by the provisions of Section 338(4) of the Code of Civil Procedure of the State of California.

And for a Fourth and Separate and Distinct Defense to plaintiff's alleged cause of action, defendant avers.

I.

That plaintiff's alleged cause of action, in so far as it may seek or be intended to impress a constructive trust upon the assets of the Estate of Edward Cebrian, deceased, which are in custodia legis, is barred by laches in that plaintiff has ad-

mitted that he had knowledge of all the facts which he now claims entitle him to relief, almost two and one-half years before he brought this action. That such lack of diligence on the part of plaintiff and his predecessors in title to press his application for equitable relief has resulted in prejudice to defendant and other heirs of the Edward Cebrian estate, in that both the primary contracting parties are now dead, many personal records of the decedent, Edward Cebrian, have long since been lost or destroyed, and defendant is unable to verify or discover matters vital to her defenses, such as the presence or absence of a valid legal consideration for the note and the fact of payment by the defendant before he died, or any other circumstance, such as the possible merger of the note in a judgment obtained by any lawful holder thereof.

Wherefore, defendant prays that plaintiff take nothing by his complaint and that she be hence dismissed, with her costs.

/s/ CHARLES D. SOOY,
Attorney for Defendant.

Duly Verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 2, 1953.

[Title of District Court and Cause.]

ORDER FOR JUDGMENT IN FAVOR OF
DEFENDANT

This matter having been tried, briefed and submitted for decision,

The Court finds: That defendant-executrix, Isabelle C. Koch, committed no fraud extrinsic in character with respect to the probate proceedings involving the late Edward Cebrian. That there is no basis in law or in fact for directing the establishment of a constructive trust against said defendant and in favor of plaintiff, Wilma Urch Colville.

In view of the Court's specific finding on the issue of fraud, there is no occasion to pass upon the applicability of the statute of limitations or the defense of laches.

Accordingly, It is Ordered that judgment be entered in favor of defendant upon preparation of findings of fact and conclusions of law. Each side shall bear its own costs.

Dated: November 9, 1954.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed November 10, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on regularly for trial on the 9th day of March, 1954, and continuing to and including the 11th day of March, 1954, before the Court, Honorable George B. Harris, United States District Judge, presiding, jury having been duly waived by the parties, Carl Hoppe, Esq., and Charles E. Townsend, Jr., Esq., appearing as attorneys for plaintiff, and Charles D. Sooy, Esq., appearing as attorney for defendant, and from the evidence introduced the Court finds the facts, as follows, to wit:

1. That Charles J. Colville, the original plaintiff herein, was at all times prior to his death a citizen of the Dominion of Canada, and that plaintiff by substitution, Wilma Urch Colville, is the widow, and executrix of the estate of Charles J. Colville, deceased, the original plaintiff herein;

2. That defendant is a citizen of the State of California;

3. That the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00);

4. That on November 15, 1932, one Edward Cebrian, now deceased, executed and delivered to the agents and attorneys of one John S. Barbee, or his assignee, Van Meter Terrell Feed Company, a Kentucky Corporation, a promissory note dated

November 15, 1932, whereby Edward Cebrian promised to pay to John S. Barbee, or his order, the sum of \$10,276.92 with interest at six per cent per annum from date until paid, payable six months after the date thereof at 200 Trust Building, Lexington, Kentucky;

5. That a full, true and correct copy of the promissory note is as follows:

\$10,276.92—

San Francisco, California, November 15, 1932.

Six Months After Date, for value received, I promise to pay to the order of John S. Barbee, of Lexington, Kentucky, the sum of Ten Thousand, Two Hundred Seventy-six and 92/100 dollars (\$10,276.92), with interest at the rate of six per cent, per annum from date until paid, without defalcation, interest payable at maturity, and thereafter semi-annually until paid in full, this note negotiable and payable at 200 Trust Building, Lexington, Kentucky. The makers and endorsers of this note and all parties hereto waive presentment thereof for payment, notice of non-payment, protest and notice of protest and dishonor, and diligence in bringing suit against any and all parties hereto, including makers and endorsers, and all defenses to the payment thereof, and I guarantee payment thereof in the hands of bona fide holders.

/s/ EDWARD CEBRIAN.

6. That said promissory note dated November 15, 1932, was executed and delivered in renewal of an earlier promissory note from Edward Cebrian to John S. Barbee made in 1928 in Kentucky, which earlier note John S. Barbee had assigned to Van Meter Terrell Feed Company, a Kentucky Corporation, as collateral security for a debt owed by John S. Barbee to said corporation. Upon receipt in November, 1932, of the renewal note dated November 15, 1932, from Edward Cebrian to John S. Barbee, John S. Barbee endorsed said note in blank and delivered it to Van Meter Terrell Feed Company, a Kentucky Corporation;

7. That on or about June 6, 1945, Baylor Van-Meter sole owner of the said Van Meter Terrell Feed Company, a Kentucky Corporation, died at Lexington, Kentucky. On or about June 16, 1945, First National Bank and Trust Company of Lexington, Kentucky, was duly appointed executor of his estate, and on or about August 24, 1945, First National Bank and Trust Company of Lexington, Kentucky, was duly appointed trustee of the estate of Baylor Van-Meter, deceased;

8. That on or about May 24, 1950, said First National Bank and Trust Company of Lexington, Kentucky, delivered said note to Charles J. Colville, original plaintiff herein, and assigned to said Charles J. Colville all right, title, claim and interest it held in and to said promissory note dated November 15, 1932, from Edward Cebrian to John S. Barbee as executor or trustee of the estate of Baylor

Van-Meter, deceased, or as both executor and trustee of said estate;

9. That Edward Cebrian died on or about June 6, 1944, in the County of Los Angeles, State of California;

10. That at the time of his death, Edward Cebrian owed to John S. Barbee, Van Meter Terrell Feed Company, a Kentucky Corporation, or the assignee or assignees or successors of said John S. Barbee or said Corporation, the said note dated November 15, 1932, plus simple interest from said date at six per cent (6%) per annum;

11. That the Superior Court of the State of California, in and for the City and County of San Francisco, held that Edward Cebrian was at the time of his death a resident of the City and County of San Francisco, State of California, having lived most of his life in the Cebrian family home in San Francisco, although he died in the County of Los Angeles, where he had been living for about six (6) years because of his reduced financial circumstances and because of his opportunity for employment in Los Angeles County and for other reasons;

12. That on February 9, 1945, defendant executed a petition for letters of administration in the matter of the estate of Edward Cebrian, alias, deceased, and caused said petition to be filed on February 10, 1945, in the Superior Court of the State of California, in and for the City and County of

San Francisco, probate proceeding No. 98563 therein. On February 11, 1945, defendant caused notice of the hearing of said petition for letters of administration filed in San Francisco, to be given for the time and in the manner required by law and Section 441 of the Probate Code of the State of California. In her said petition for letters of administration, defendant alleged that Edward Cebrian had died in the County of Los Angeles, State of California, but that he was at the time of his death a resident of the City and County of San Francisco, State of California;

13. That on February 20, 1945, after filing a petition for letters of administration in the Superior Court of the State of California, in and for the City and County of San Francisco, and before any hearing was had upon said petition, defendant filed a petition for letters of administration in the Superior Court of the State of California, in and for the County of Los Angeles. Defendant caused notice of the hearing of said Los Angeles petition to be given in the manner and for the time required by law and by Section 441 of the Probate Code of California. The defendant's only reason for filing said petition in Los Angeles County was to avoid delay in the event the San Francisco Superior Court should decide that Edward Cebrian was a resident of the County of Los Angeles, rather than of the City and County of San Francisco, as she alleged, and if so, it would necessarily follow that it

would have decided it had no jurisdiction to appoint defendant as administratrix. In this event, defendant then could and would have proceeded with the probate proceedings instituted by her in Los Angeles County solely to meet that contingency. However, on February 26, 1945, the San Francisco Superior Court determined that Edward Cebrian was a resident of the City and County of San Francisco at the time of his death and appointed defendant as his administratrix. Accordingly, defendant abandoned the Los Angeles proceeding;

14. At no time subsequent to the death of Edward Cebrian did defendant, as an individual or as administratrix of his estate, inter-meddle with the proper probate of the estate of Edward Cebrian, deceased, either wrongfully or fraudulently;

15. That at no time subsequent to the death of Edward Cebrian, did defendant conceal, fraudulently or otherwise, the existence of the assets of the said Edward Cebrian; defendant has inventoried and accounted for all of the assets of the Edward Cebrian estate in the probate proceeding pending in the City and County of San Francisco; the allegations in the petition for letters of administration filed February 10, 1945, in the Superior Court in and for the City and County of San Francisco, as to the legal residence of Edward Cebrian at the time of his death were true and correct according to the best information and belief of defendant;

16. That no acts of defendant have deprived

plaintiff, or her predecessors, of their right to file claims;

17. That on February 26, 1945, defendant, as administratrix of the estate of Edward Cebrian, alias, deceased, caused Notice to Creditors to be published in *The Recorder*, a newspaper of general circulation published in the City and County of San Francisco, State of California, in the matter of the estate of Edward Cebrian, alias, deceased, probate proceeding No. 98563, for the time and in the manner provided by law and Section 700 of the Probate Code of California; that the six-months period of time to file claims expired August 26, 1945; that no claim was ever filed or presented by plaintiff or any one else upon the promissory note of Edward Cebrian dated November 15, 1932, referred to in plaintiff's complaint, as required by the Probate Code of California;

18. That all of the facts alleged in plaintiff's Complaint inconsistent with the foregoing findings are untrue;

19. That all the facts alleged in defendant's Answer not inconsistent with the foregoing findings are true;

20. That no act of defendant in connection with the probate of the estate of Edward Cebrian was performed with any intent to deceive, delay, defraud, or mislead creditors of the estate of Edward Cebrian.

Conclusions of Law

As Conclusions of Law from the foregoing findings of fact the Court finds, as follows:

I.

That any suit or action to recover upon the promissory note dated November 15, 1932, made by Edward Cebrian in favor of John S. Barbee in the sum of \$10,276.92, with interest, is forever barred by reason of the failure of the holder of said promissory note to file a creditor's claim in probate thereon within six months from the date of the first publication of Notice to Creditors on February 27, 1945, made in the matter of the estate of Edward Cebrian, alias, deceased, pending in the Superior Court of the State of California, in and for the City and County of San Francisco, probate file No. 98563 in the records thereof.

II.

That plaintiff and her predecessors in interest had constructive notice of the hearing on February 26, 1945, of the petition of defendant for letters of administration heard in the Superior Court of the State of California, in and for the City and County of San Francisco, by reason of the notice of said hearing given by defendant in the manner and for the time required by law.

III.

That the Superior Court of the State of California, in and for the County of Los Angeles, never had or acquired jurisdiction of the matter of the

estate of Edward Cebrian, alias, deceased, under the petition for letters of administration filed therein by defendant on February 20, 1945, by reason of the fact that the Superior Court of the State of California, in and for the City and County of San Francisco, in which the first petition for letters of administration was filed on February 10, 1945, had on February 26, 1945, determined that Edward Cebrian was a resident of the City and County of San Francisco, State of California, at the time of his death and that the jurisdiction to administer the estate of said decedent was in San Francisco Superior Court.

IV.

Defendant committed no fraud, extrinsic in character, with respect to the probate proceedings in the matter of the estate of Edward Cebrian, alias, deceased, either in the County of Los Angeles or the City and County of San Francisco, State of California.

V.

That plaintiff is not entitled by law or under the evidence adduced at the trial of this case to a judgment that defendant, either as administratrix of the estate of Edward Cebrian, alias, deceased, or as an individual, is a constructive trustee for plaintiff, Wilma Urch Colville.

VI.

The Court, having disposed of the case in favor of defendant by express findings of fact and conclusions of law on the issue of fraud, makes no findings of fact or conclusions of law on the issues as to the interpretation of the note in suit, the questions of

conflicts of laws or the other issues raised by defendant's special defenses based upon laches and various statutes of limitation of the States of California and Kentucky.

VII.

That defendant is entitled to judgment that plaintiff take nothing by her complaint, provided, however, each party shall bear her own costs of suit. Let Judgment be entered accordingly.

Dated: February 14, 1955.

/s/ GEORGE B. HARRIS,

United States District Judge.

[Endorsed]: Filed February 14, 1955.

In the United States District Court for the Northern District of California, Southern Division
Civil Action No. 32020

WILMA URCH COLVILLE, Executrix of the
Last Will and Testament of Charles J. Colville,
Deceased,

Plaintiff,

vs.

ISABELLE C. KOCH, individually and as Administratrix of the Estate of Edward Cebrian, Deceased,

Defendant.

JUDGMENT

This cause having come on regularly for trial on the 9th day of March, 1954, before the United States

District Court, Honorable George B. Harris, District Judge, presiding, without a jury, a jury having been duly waived; Carl Hoppe, Esq., and Charles E. Townsend, Jr., Esq., appearing as attorneys for plaintiff, and Charles D. Sooy, Esq., appearing as attorney for defendant; and the Court having made its Findings of Fact and Conclusions of Law;

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that plaintiff take nothing by her said complaint, and

It Is Ordered further that each party bear her own costs of suit incurred herein.

Dated: February 14, 1955.

/s/ GEORGE B. HARRIS,
United States District Judge.

Receipt of copy acknowledged.

Lodged November 18, 1954.

[Endorsed]: Filed February 14, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Wilma Urch Colville, Executrix of the last will and testament of Charles J. Colville, Deceased, plaintiff above named, hereby appeals to the United States Court of Appeals for

the Ninth Circuit from the final judgment entered in this action on February 15, 1955.

/s/ CARL HOPPE,
Attorney for Appellant.

[Endorsed]: Filed March 17, 1955.

The United States District Court, Northern District
of California, Southern Division
No. 32020

WILMAN URCH COLVILLE, Executrix of the
last Will and Testament of Charles J. Colville,
Deceased,

Plaintiff,

vs.

ISABELLE C. KOCH, Individually and as Admin-
istratrix of the Estate of Edward Debrian, De-
ceased,

Defendant.

Before: Hon. George B. Harris, Judge.

TRANSCRIPT ON APPEAL

Appearances:

For the Plaintiff:

CARL HOPPE, ESQ., and
CHARLES E. TOWNSEND, JR., ESQ.

For the Defendant:

CHARLES D. SOOY, ESQ.

March 9, 1954, 10:00 A.M.

The Clerk: Colville vs. Koch on trial.

Mr. Hoppe: Ready, your Honor, for the Plaintiff.

Mr. Sooy: Ready for the Defendant. [3*]

* * *

Mr. Hoppe: * * * I would like to call your Honor's attention to a mis-statement made in paragraph 3 of the complaint, and as far as that is concerned, we adopt paragraph 3 of the Defendant's answer. We alleged the [4] Van Meter-Terrell Feed Company was a sole proprietorship and the Defendants pointed out it was a Kentucky corporation. We have investigated and have learned that we made a mistake, and at this time, in order to eliminate any controversy on that, I would like to make a motion to amend paragraph 3 of the complaint to read as follows:

"Thereafter said John S. Barbee signed said promissory note to Van Meter-Terrell Feed Company, a Kentucky corporation, and said Van Meter-Terrell Feed Company thereafter assigned said promissory note to one Baylor Van Meter of Lexington, Kentucky."

The Court: If there is no objection, then, the motion may be granted with respect to the amendment.

Mr. Sooy: No objection, and I take it our answer may be deemed a denial.

Mr. Hoppe: Certainly.

The Court: So ordered. [5]

* * *

Mr. Hoppe: * * * We offer in evidence as Plaintiff's Exhibit 1 a note from Edward Cebrian to John S. Barbee dated November 15, 1932, in the amount of \$10,276.92. [8]

* * *

Mr. Hoppe: * * * I should like to read a page and a half from Mr. Weldon's deposition. This deposition was taken on April 23, 1953, at Santa Barbara, California, and counsel for the Plaintiff and counsel for the Defendant were both present:

"Q. (By Mr. Hoppe): "Will you state your name, please.

"A. Hugh J. Weldon.

"Q. And you are an attorney in Santa Barbara?

"A. That is right.

"Q. And you at one time represented a John S. Barbee? A. That is right.

"Q. —of Lexington, Kentucky?"

I then identified the document that is now in evidence as Plaintiff's Exhibit 1 and asked the following question:

(The note referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 1.)

"Q. I hand you Plaintiff's Exhibit No. 1, and ask you whether you can identify it.

"A. Yes. That is the original of the promissory note for \$10,276.92 dated San Francisco, California, November 15, 1932, purporting to be signed by Ed-

ward Cebrian. This note was prepared in my office, forwarded by mail to Edward Cebrian at his office in San Francisco, and received back by me in due course of mail in a letter purporting to be signed by him. [9]

“Q. Are you familiar with Mr. Cebrian’s signature?

“A. Only by reference to his signature on other letters in my file which I have received from time to time from him, comparing the signature on the note with the signature on letters purporting to come from him and received by me in the mail from him.

“I should say that appears to be his signature, yes.

“Q. Upon receiving Plaintiff’s deposition Exhibit No. 1, what did you do with it, Mr. Weldon?

“A. I delivered it to Heaney Price and Postel of this city, who were at that time representing locally Allen, Botts and Duncan.

“Q. Who is Allen, Botts and Duncan?

“A. They were a firm of attorneys in Lexington, Kentucky, who, from their correspondence, were the attorneys for Van Meter-Terrell Feed Company.

“Q. Now, have you ever had correspondence with John S. Barbee of Lexington, Kentucky?

“A. Yes, I have had, on many occasions.

“Q. And are you familiar with his signature from that correspondence?

“A. From his signature on letters purporting to come from him, yes.

“Q. Are you familiar with the signature that appears on the reverse side of Plaintiff’s Exhibit 1? [10]

“A. Yes. I would say that, in comparing that with signatures on many letters which I received in the mail from Mr. Barbee, I would say that is his signature. I am not familiar with his signature otherwise than by receiving correspondence that I have had with him.”

As Plaintiff’s Exhibit 2 we offer in evidence a letter dated November 19, 1932, from Edward Cebrian to Hugh J. Weldon of San Francisco, purporting to mail the note.

The Court: It may be marked in evidence.

* * *

Mr. Hoppe: As Plaintiff’s Exhibit 3 we offer in evidence a receipt dated November 22, 1932, signed by Heaney, Price Postel.

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff’s Exhibit No. 4 we offer in evidence a letter dated December 3, 1932, Lexington, Kentucky, from John S. Barbee to Hugh J. Weldon acknowledging receipt.

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff’s Exhibit 5 we offer in evidence a letter from Edward Cebrian to Hugh J. Weldon dated [11] December 8, 1932, acknowledging receipt of the notes for which this note was given as a renewal.

The Court: It may be marked.

* * *

Mr. Hoppe: Your Honor, the next document that we want to offer in evidence is a certificate of registration of Edward Cebrian down in the Cuyana Precinct in Santa Barbara County. The original certified copy of that, that is, the one that would technically be admissible in evidence under the rules, is part of the pleadings. Rather than take the pleadings apart I should like to offer in evidence a copy of that. Is that satisfactory?

Mr. Sooy: No objection.

Mr. Hoppe: As Plaintiff's Exhibit 6 we offer in evidence a certified copy of the notice as it appears on the Great Register of Santa Barbara showing that on July 13, 1936 Edward Cebrian was registered in Santa Barbara County.

The Court: It may be marked.

* * *

Mr. Hoppe: I should like to do a little reading from the deposition of Isabelle C. Koch, who is the defendant. She is ill, your Honor, and counsel has agreed that her deposition [12] could be taken, although technically she would not come under the rules, but we have agreed under that provision which permits us to do so. This deposition was taken on February 23, 1954:

“Q. What is your name, please?

“A. Isabelle Cebrian Koch.

“Q. What is your address?

“A. 2090 Pacific.

“Q. How long have you lived in San Francisco?”

“A. On and off, you mean? Well, I was born in San Francisco; raised in San Francisco.

“Q. Was Edward Cebrian your brother?”

“A. Yes, he was.

“Q. Are you the administratrix of this estate?”

“A. Yes, sir, I am.

“Q. Were you appointed in February, 1945?”

“A. Yes.

“Q. When did you brother pass away, Mrs. Koch?”

“A. 1944.

“Q. Was it in June of that year?”

“A. Yes, it was.”

For your information I was reading from page 3, Mr. Sooy. I now turn to page 19 of the deposition. Question by Mr. Hoppe.

“Q. Now, Mrs. Koch, to go back over the history of the various places that your brother lived, we will go back and start in 1935. Now, from 1935 to 1938, your brother lived at the Cuyana Rancho under the lease, isn't that right?”

A. Yes.

“Q. And while he was there you also lived there, did you not, you and your husband?”

A. Yes.

“Q. And did you and your husband vote down in——”

A. I don't recall.

“Q. You do not recall?”

A. I don't recall.

“Q. Do you recall your brother voting in the elections down at Cuyana?”

A. I don't recall.”

I go to page 20:

“Q. Now, in 1935, while you were living down at the ranch there and Edward was living down there, Edward at that time gave you a deed of his

interest in the new Caledonia Farms, did he not?

“A. He did.”

Mr. Hoppe: At this time we offer in evidence as plaintiff's Exhibit 7, a certified copy of a deed dated March 21, 1935, from Edward Cebrian to Isabelle C. Koch of certain lands up in Yolo County.

The Court: It may be marked. [14]

* * *

“Q. He did?”

“A. And I could not take care of it, so my sister took it up. I couldn't handle two things.

“Q. And so you deeded the property to your sister? A. To my sister.”

Mr. Hoppe: At this time we offer in evidence as Plaintiff's Exhibit 8 a certified copy of the deed from Isabelle C. Koch to Josephine C. McCormick dated October 30, 1935, of the same lands up in Yolo County.

The Court: It may be marked.

* * *

Mr. Hoppe: I read from the deposition again.

“Q. Now, in 1938, after Edward Cebrian left the ranch, then he moved to Los Angeles, is that right? A. Yes.

“Q. Now, while you were living at the ranch down there your father died, did he not?”

“A. He died, yes.

“Q. And he left the family homestead to Ralph Cebrian, didn't he? A. That's correct.

“Q. And then is it not true that while you were

still living down there that Ralph Cebrian sold the family home? While you and your brother were living at Cuyana did not your [15] Ralph sell the family homestead?

“A. I do not recall in what year he sold it. I do not remember.

“Q. To whom did he sell it? Do you recall that?

“A. I believe it was to Louis Cebrian, my brother’s parents-in-laws.

“Q. Now, when you and your husband came back from Cuyana where did you and your family move? A. Fairmont Hotel.

“Q. And when you moved to the Fairmont Hotel, where was Ralph Cebrian living at that time?

“A. He was living on Bush Street, I believe.

“Q. He was living on Bush Street?

“A. Yes.

“Q. So that by the time that you had moved back here to the Fairmont Hotel, Ralph Cebrian had already left the family homestead, had he not?

“A. I believe so.

“Q. And when you came back to the Fairmont did Edward come up with you?

“A. He did not. He went to Los Angeles.

“Q. He went to Los Angeles? A. Yes.”

Mr. Hoppe: As Plaintiff’s Exhibit 9, we offer in evidence a certified copy of a deed from Ralph J. Cebrian to Louis deL. [16] Cebrian dated May 17, 1937.

The Court: It may be marked.

* * *

Mr. Hoppe: We do have much more of this, your Honor. It is the only way of doing it with these documents.

As Plaintiff's Exhibit 10 the Plaintiff offers in evidence a stipulation of facts entered into by the parties in August of 1953. The substance of this stipulation is that a party by the name of Minnie Melcher, if she were called to testify, would testify that she ran an apartment house down in Los Angeles; that on October 1, 1939, Edward Cebrian came there and he rented an apartment, and he promptly moved in with all of his belongings, and he stayed there until June 6, 1944, and that he told her it was his intention to become a permanent tenant, and that it was his intention to make the apartment his permanent home, and that when he moved in he took in his book cases, his books, his pictures, stamp collection and his clothing, and that he never left the premises in all the time he was living there until the date of his death.

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 11 Plaintiff offers [17] in evidence a certified copy of the affidavit of registration of Edward Cebrian as a voter in Los Angeles County, showing that he became a registered voter on March 20, 1940, that he removed from Cuyama in October 1938, and that he voted in the general elections of 1940 and 1942,

giving his address as 1549 Northwestern Avenue, which is the address in that stipulation.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 12, the Plaintiff offers in evidence a certified copy of the death certificate of Edward Cebrian, showing that he died on June 6, 1944, and that his usual residence was Los Angeles, 1549 Northwestern Avenue.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 13, the plaintiff offers in evidence a certified copy of the file in the Superior Court for the County of Los Angeles No. 240761, in the matter of the estate of Edward Cebrian. [18]

* * *

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 14, we offer in evidence a certified copy of the will of Baylor Van Meter, a certified copy of letters of administration to First National Bank and Trust Company of Lexington, Kentucky, and a certified copy of letters addressed to said bank. [19]

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 15, we offer in evidence a certified copy of a deed dated November 12, 1948, from Joseph C. McCormick to the estate of Edward Cebrian, deceased, transferring back this Yolo County property.

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 16, we offer in evidence a certified copy of a deed April 8, 1949, from Josephine C. McCormick to the heirs or devisees of Edward Cebrian also transferring this property back.

The Court: It may be marked.

* * *

Mr. Hoppe: As Plaintiff's Exhibit No. 17, we offer in evidence an assignment of debt and note executed by the First National Bank and Trust Company of Lexington, Kentucky, to Charles J. Colville, and as Plaintiff's Exhibit 17-A, we offer in evidence a copy of a letter dated May 20, 1950, referred to in the assignment. [20]

* * *

Mr. Hoppe: Your Honor, referring to the Los Angeles probate proceedings, which are plaintiff's Exhibit 13, changing the numbers, I would just like to read this question and answer from page 24, of Mrs. Koch's deposition. Question by Mr. Hoppe:

"Q. Mrs. Koch, I hand you Plaintiff's deposition Exhibit 1, for identification and ask you to look at it and tell us if you recall signing an original paper of which that appears to be a copy?"

"A. Yes, I did sign it. That is my signature." [21]

* * *

WILMA URCH COLVILLE

the Plaintiff herein, called as a witness on her own behalf, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name and occupation, if any, for the Court?

The Witness: Wilma Urch Colville, 1229 Malcolm Avenue, Los Angeles.

The Clerk: Have you an occupation?

The Witness: No, just housewife.

Direct Examination

By Mr. Hoppe:

Q. Where were you born, Mrs. Colville.

A. In Canada, Toronto, Canada.

Q. What citizenship are you, Mrs. Colville?

A. I am a Canadian.

Q. Are you the widow of Charles J. Colville?

A. Yes.

Q. When were you and Mr. Colville married?

A. October, 1911.

Q. In what country? A. Canada.

Q. When did you come into this country?

A. 1918. I came in in September; he came in in February.

Q. At what port of entry did you come in? [22]

A. Mr. Colville came in at Buffalo and I came in at Niagra Falls.

Q. What citizenship was Mr. Colville when you

(Testimony of Wilma Urch Colville.)

came into this country? A. Canadian.

Q. Did Mr. Colville ever apply for American citizenship? A. He did right after he came in.

Q. Where was that? A. Buffalo.

Q. When was that? A. 1918.

Q. What happened to that application?

A. He was not in Buffalo when it came due, and so it lapsed.

Q. Have you gone through Mr. Colville's personal effects, and have you handed me some documents? A. Yes.

Mr. Hoppe: As Plaintiff's Exhibit 18, the Plaintiff offers in evidence the passport of Charles J. Colville up to and including page 9, thereof, the rest of the pages being blank, and we ask leave to withdraw the original of the passport and to have photostats made and substitute the photostats.

The Court: That may be the order.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 19, we offer in evidence [23] the alien registration receipt card No. 5540284, issued to Charles Julius Colville under the Alien Registration Act of 1940, and we ask leave to withdraw this and substitute a photostat.

The Court: So ordered.

* * *

Mr. Hoppe: As Plaintiff's Exhibit 20, we offer in evidence a resident alien's border crossing identification card dated July 14, 1949, and issued to

(Testimony of Wilma Urch Colville.)

Charles J. Colville, and likewise ask leave to withdraw it.

The Court: It is so ordered.

* * *

Q. (By Mr. Hoppe): Mrs. Colville, I hand you Plaintiff's Exhibit I, for identification and ask you if you can identify what that document is? I mean Plaintiff's Exhibit 1 in evidence.

A. This is not the note, is it?

Q. Do you remember—

A. I remember giving you that.

Q. Where did you find this document?

A. It was in the safe deposit box in the bank.

Q. Where was that bank located?

A. In Westwood. [24]

Q. And what did you do with this document?

A. I sent it to you.

Mr. Hoppe: There are no further questions. You may cross examine.

Cross-Examination

By Mr. Sooy:

Q. Mrs. Colville, did you ever apply for citizenship in the United States?

A. No, I did not.

Mr. Sooy: That is all.

Mr. Hoppe: Your Honor, the Plaintiff is ready to rest with the exception that we do not have the missing document in the deposition of Isabelle C. Koch, and we want to introduce one exhibit in

evidence and read some of the testimony that has to do with it. Maybe I think the best thing to do is to assign a number to it now and I will read the part of the transcript I want and maybe we can put the exhibit in when we get it.

The Court: That is agreeable.

(The file of the Superior Court of the City and County of San Francisco in Case No. 98563, was thereupon deemed marked Plaintiff's Exhibit 21, in evidence.) [25]

* * *

Mr. Hoppe: * * * we would like to read the following questions in evidence.

* * *

This is on page 24.

“Q. Now, when you went before the Superior Court Judge here in San Francisco—what did you say his name was? “A. Judge Fitzpatrick.

“Q. Judge Fitzpatrick. What did you tell Judge Fitzpatrick about the proceedings you had filed down in Los Angeles?

“A. I told him I had filed them in Los Angeles so that the court would decide which was his residence.

Q. Now, what were all of the facts that you told Judge Fitzpatrick to help him reach a decision?

“A. That he was born here in San Francisco; he went to school here in San Francisco, and then they went abroad also to [26] school, but his first

schooling he started here. When he came back to America he went to Berkeley to the University, and his family home was here; he always wanted to live here; he would take trips as we all did, and he would always come back home, and that this was his home. He was living temporarily in Los Angeles, because he was able to find a job in Los Angeles, whereas here he had not been able to find one. So I left it to the court to decide.

“Q. And that’s the sum and substance of what you told Judge Fitzpatrick?”

“A. That’s about it.

“Q. Can you think of anything else that you told him? A. Not at this moment I don’t.

“Q. Do you know if your lawyer has a transcript of the hearing that you had before Judge Fitzpatrick? A. I imagine so.”

I would like to read from page 26 to page 27.

“Q. Now, what did you do with the personal belongings your brother had in his apartment down in Los Angeles? A. He gave them to me.

“Q. And what was the nature of the personal belongings he had down in Los Angeles?”

“A. Books and family paintings, and that’s about all.

“Q. Stamp collection?”

“A. No. He probably sold it. [27]

“Q. And then you bought those personal belongings from Los Angeles up here when you cleaned out the apartment?”

“A. I sold some of the books.

“Q. What were the natures of the paintings that he had?

“A. Paintings that were in the family home that were distributed after my father died. We each got a couple.

“Q. Old masters?

“A. Yes—supposed to be.”

Mr. Hoppe: With that, and with the understanding that that file will go in, Plaintiff will rest, your Honor.

* * *

Mr. Sooy: Some weeks ago a written stipulation was prepared by myself in connection with certain exhibits to be attached to the Weldon deposition. [28]

* * *

Mr. Sooy: * * * The stipulation made between Mr. Hoppe and myself in part is as follows: It was a stipulation for an order, incidentally, that was signed yesterday by Judge Roche:

“Now, therefor, it is ordered that that certain file entitled ‘Barbee vs. Cebrian’ marked plaintiff’s deposition Exhibit No. 2, in connection with the deposition of Hugh J. Weldon, Esq., taken by Plaintiff on April 23, 1953, which file is now in the possession of the clerk of this court, may be removed by either Carl Hoppe, Esq., attorney for Plaintiff, or Charles D. Sooy, Esq., attorney for Defendant, from the office of the clerk for the purpose of having photographs or photostats made, in triplicate, of each of those certain 23 letters

and documents now contained in said file, which are hereinafter more particularly described, whereupon said file shall be returned to the clerk of this court.

“It is further ordered that one of said sets of copies of 23 letters and documents shall be attached to and deemed exhibits to the original deposition of Hugh J. Weldon, Esq., taken in Santa Barbara, California, on April 23, 1953, and that [29] the remaining two sets be delivered to counsel for the respective parties hereto.”

* * *

In order to save time and the extended reading of depositions I now offer the deposition of Hugh Weldon and Isabelle C. Koch and the exhibits which were offered in evidence in connection with those depositions, including the 23 letters to which I referred, to be introduced in evidence.

Mr. Hoppe: Your Honor, we object to a blanket offer of that type because these depositions in part were taken for discovery purposes. Much is not admissible in evidence, and we have objections that we would make to various portions. I had not anticipated a blanket offer of this type. [30]

* * *

The Court: I would make this suggestion, Counsel, that the depositions and the exhibits be received by the court subject to your specific objection to any part thereof or the whole thereof, reserving unto yourself the right and opportunity to present

that objection either in writing or orally at an appropriate time.

Mr. Hoppe: That is agreeable to me. [31]

* * *

RALPH CEBRIAN

called as a witness on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name, your address and your occupation to the Court.

A. Ralph J. Cebrian, 2111 Franklin Street; retired.

Direct Examination

By Mr. Sooy:

Q. How long have you lived in San Francisco, Mr. Cebrian? A. Practically all my life.

Q. Are you a brother of Edward Cebrian?

A. Yes, sir.

Q. Where was Edward born?

A. In San Francisco.

Q. Were you also born in San Francisco?

A. Yes, sir, I was.

Q. Were you younger or older than your brother? A. Younger. [33]

Q. By what margin sir? How many years?

A. Oh five or six years.

Q. Is your mother deceased? A. Yes.

Q. When did she pass away? A. 1920.

Q. Is your father deceased? A. Yes, sir.

(Testimony of Ralph Cebrian.)

Q. When did he pass away? A. 1935.

Q. Where did your father pass away?

A. In Madrid Spain.

Q. Was he staying there at that time?

A. He was, yes.

Q. At the time of his death in 1935, did he own a home in San Francisco?

A. He did.

Q. Where was that home?

A. 1801 Octavia Street.

Q. Were you living in that home at the time of his death? A. I was.

Q. Did your brother Edward Cebrian maintain an apartment in that home at that time?

A. He did.

Q. Were any of his personal belongings in that home? [34]

A. Yes.

Q. Did they remain there at all times while that home remained in the Cebrian family?

A. Yes, sir.

Q. Will you state to the Court what the extent of his apartment was?

A. He has two rooms, his own rooms on the main floor, and a camera room, we called it. He was very much interested in photography, and a very elaborate camera room with all his lenses, cameras, and so forth—three rooms which were exclusively his.

Q. What happened to the home after your father passed away?

(Testimony of Ralph Cebrian.)

A. He bequeathed the home to me, and I was forced to sell it to satisfy an obligation.

Q. When did you move out of the home?

A. In 1938, March 19th, 1938.

Q. How do you happen to remember that date, Mr. Cebrian?

A. March 19th is the calendar St. Joseph's Day, and in Spain St. Joseph's Day is like St. Patrick's Day in Ireland. It is a big day, and my mother's name, second name, was Josephine and we always had a big celebration on that day. So that date is in my mind.

Q. Did you execute a conveyance of that home to your brother Louie?

A. I did, yes, sir. [35]

Q. Was that a settlement of a family obligation, a debt from you to Louie?

A. That is right.

Q. Who was actually living in the home at the time your father passed away?

A. Myself, my brother; the two of us.

Q. Which brother are you referring to?

A. My brother Edward.

Q. How long did your brother Edward continue to live in the family home with you?

A. Well, right practically until—in fact, until the day I moved out. He moved out a few days later.

Q. Did he spend some time at the Cuyana Rancho in Santa Barbara County?

A. Yes, sir.

(Testimony of Ralph Cebrian.)

Q. When did your brother Louis dispose of the home at 1801 Octavia, if you know?

A. Almost as soon as I moved out, as I understand it.

Q. What happened to Edward's belongings when you moved out, Mr. Cebrian?

A. Well, I moved out and they remained there, and a few days later he went through the home and removed them himself.

Q. You know that of your own knowledge?

A. Absolutely.

Q. Do you know what he did with his belongings at that time? [36]

A. No, I couldn't say. I think that Bekins Moving and Storage moved them for him.

Q. When did you and your brother Edward last meet, Mr. Cebrian?

A. In the fall of 1938.

Q. Where was he staying at that time, or living?

A. At the Palace Hotel.

Q. In San Francisco?

A. San Francisco.

Q. Where did you meet?

A. On First Street.

Q. Who was present?

A. Opposite my home then. I had moved from the residence to the small apartment on Bush Street and he was coming to visit me, and I was just coming home and we talked on the sidewalk.

Q. Who else was present then?

A. Just the two of us.

(Testimony of Ralph Cebrian.)

Q. Will you please tell the Court the conversation you had with your brother Edward at that time?

A. Yes. My brother Edward had come to see me and told me that our sister Isabelle wanted him to move down to Los Angeles.

The Court: His sister Isabelle?

A. Isabelle Koch, and she told him if he moved down there she would do the best to help him live, and so forth, and he [37] came to me to ask me to intercede with my sister and ask her because he wanted to remain in San Francisco. I advised him that I thought the best thing for him to do was to accede to her request and perhaps the family could work it out so he could return to San Francisco.

Q. Did he tell you he wished to remain in San Francisco? A. Yes, indeed.

* * *

Q. Did you ever visit your brother Edward Cebrian at the Cuyana Ranch?

A. I did not, no.

Q. Did you ever visit him in Los Angeles?

A. No, sir.

Q. Did you and your brother correspond between 1938 and 1944, [38] the date of his death?

A. No, sir.

Q. Not at all?

A. Not at all. My brother did not write letters. In his office, if he had somebody to dictate a letter

(Testimony of Ralph Cebrian.)

to, that was one thing, but he himself wrote very little, very sparingly.

Q. Do you know of your own knowledge his dealings with the Hibernia Bank in connection with the Cuyana Ranch? A. No, I do not.

Q. You know but not of your own knowledge?

A. Not of my own knowledge.

Q. Do you know where your brother lived in Los Angeles? A. No. [39]

* * *

Q. Was there any feeling at all between your brother and yourself?

A. No, your Honor. It was just a matter that we did not write. But when he was in San Francisco we lived together. We had our office together for many, many years, and we were in business together, and absolutely the closest probably——

Q. What was your business here, Mr. Cebrian?

A. We owned this ranch, the Cuyama Ranch, and we ran the ranch. I was mostly in San Francisco, in the office, and go down to the ranch, and so forth, on cattle business.

Q. Cattle and breeding horses?

A. No, the breeding of horses he had in Kentucky. I was not interested in the breeding of horses.

Q. Cuyama Ranch was in San Diego?

A. Santa Barbara and San Luis Obispo Counties.

Q. How extensive?

A. 44,000 acres plus, a little over.

(Testimony of Ralph Cebrian.)

Q. Was it an old ranch?

A. An old Spanish Ranch.

Q. An old grant?

A. An old grant, and our troubles came because we had a [40] mortgage, and a very large mortgage with the Hibernia Bank, and its business didn't pay. We couldn't meet the payments. So that is what started our troubles. He lost the ranch finally to the Hibernia Bank.

Q. Not unlike the story of many early Californians.

A. Yes, unfortunately yes, your Honor.

Q. (By Mr. Sooy): When did your brother Edward lose title to the ranch, Mr. Cebrian?

A. I guess it was around 1937 or 1938, as I remember now.

Q. Do you know what his rights were in connection with the ranch between 1935 and 1938?

A. I know he had an arrangement with the bank that he could buy back—he could get it back under lease, but I do not know the details, really.

Q. You, however, were one of the parties who signed this stipulation for a compromise in his debtor proceeding, are you not?

A. I imagine so, yes.

Q. You know generally the terms of that agreement were, as you stated, he had a lease with a three year option?

A. Yes, of course, it was so long ago I don't remember the details.

(Testimony of Ralph Cebrian.)

Q. Did he at any time regain title or interest in the Cuyama Rancho after 1938?

A. He did not. [41]

Q. Did he attempt to?

A. He did. Yes, he attempted to.

Q. In 1938, after he lost his rights in the Cuyama Ranch, what other resources did your brother Edward have?

A. Well, he had nothing.

Q. In 1935 prior to his making a deed to Mrs. Koch of his interest in Caledonia, what resources did he have at that time?

A. This property in Yolo County, he owned half of it and I owned half of it, but we had gotten into financial difficulties and had not paid the taxes for five years on it. We were ready to lose that property for taxes, and in 1935 I thought—the property had been in the family for many, many years. It is in the reclamation district 900—it was at that time—and my father had paid all of these big investments. The property did not pay. It was agricultural. And I thought we ought to keep it in the family. So I talked to my brother and we both decided that if the sisters wanted to take it over and pay the taxes, buy the property back from the treasurer of Yolo County, then we would be glad to deed it over to them.

The Court: You speak of the sister—that is the sister Isabelle?

A. Isabelle and Josephine McCormick. So I deeded my half share to Josephine McCormick and

(Testimony of Ralph Cebrian.)

Edward deeded his share to Isabelle Koch. Then my sister Josephine McCormick paid up all the back taxes and, of course, the property went into the two [42] names, the two sister's names. Then she went to Isabelle Koch and asked her, "Now, you pay half. I advanced so much money. I forget what it was, interest and all, and you owe me half of this."

Then Isabelle—she didn't decide. She wasn't able to take care of my brother Edward in Los Angeles, and what she had done to save the ranch, the Cuyama Ranch, and so forth, so she told my sister, "I can't take all these burdens. If you want to take it up, all right."

Then Isabelle Koch deeded her interest to Josephine McCormick, and Josephine McCormick held the property until 1944. [43]

* * *

The Court: Were these conversations part and parcel of the conversations between the four of you?

A. Yes, your Honor.

Q. They were not disjointed conversations, fragmentary in character?

A. No, your Honor.

* * *

Q. (By Mr. Sooy): Mr. Cebrian, was there a bonded indebtedness against the property?

A. Yes.

Q. That was an old Yolo reclamation?

(Testimony of Ralph Cebrian.)

A. Yes, District 900. [44]

* * *

The Witness: Today the bonds are all paid up. At that time they were not.

Q. (By Mr. Sooy): Were the bonds in default at that time?

A. Yes, the bonds had been in default, yes.

Q. Mr. Cebrian, at the time you and your brother made these prospective deeds, did the Caledonia Farms have a market value over and above this indebtedness to which you have referred?

A. No——

Mr. Hoppe: What time is this?

Mr. Sooy: At the time of the deeds in March of 1935.

The Witness: In 1935 everything was in depression. You could not sell the property. The obligations against it, the reclamation tax and maintenance tax—nobody would buy the property. There was no sale.

Q. Did you and your brother attempt to sell the property and realize an equity? A. We did.

Q. Were you unsuccessful in that regard?

A. We were not.

Q. Were you unsuccessful?

A. Unsuccessful, yes, sir.

Q. Were the local, state and county taxes delinquent for approximately five years?

A. That is right.

Q. Were you apprehensive of losing title through a tax sale? [45]

(Testimony of Ralph Cebrian.)

A. Yes, but we knew we were going to lose it. That is the reason I asked my sister, Mrs. McCormick, to take it over for those taxes. I am talking for myself now. My deed to her was just a matter to facilitate the thing, because she could have gone and bought it from the tax collector straight. So I deeded my share to her and she paid the back taxes. So in actual fact she was buying it from the Treasurer of Yolo County for those taxes.

Q. Mr. Cebrian, is your sister Josephine McCormick living? A. No, she died.

Q. Is her husband alive? A. No, he died.

Q. He predeceased her? A. He did.

Q. At the time you and your brother made these deeds to your two sisters, was there any discussion whatsoever about a trust or they would hold the property for your benefit?

A. Absolutely not.

Q. Did your sister tell you that as soon as values went up she would deed the property back to you?

A. No, sir.

Q. When if ever did you first learn that she had declared a trust in this property for your benefit?

A. In 1944 after my brother Edward's death.

Q. Do you know that your sister filed certain claims in [46] connection with Edward's estate?

A. Yes, sir.

Q. Do you recall that one of those claims was for the difference between the income taxes she had

(Testimony of Ralph Cebrian.)

paid on her general income and the income taxes she had paid on the Caledonia Farms?

A. Yes.

The Court: Was there ever a declaration of trust made?

Mr. Sooy: No, your Honor, to answer your question specifically. This trust came into existence, according to a claim filed by Mrs. McCormick, and it is the only time and place when this trust was reduced to writing. It arose, as near as I can tell, in 1940, because prior to that time Mrs. McCormick had collected the income, paid the taxes, paid the debts, and had reported the income from Caledonia Farms as her own income for each of the years from 1935 to 1939.

In 1940, for reasons which we can only surmise, she created this trust, although at that time she did not disclose it either to her brother Edward or her brother Ralph, but it was simply an accounting division between the income of her husband and herself and the income from Caledonia Farms. She filed independent returns of income for that property.

Then when Edward's estate was probated, after Edward died, she disclosed to her brother Ralph Cebrian and her sister Mrs. Koch that she had set up this trust because she was being [47] penalized for high income taxes on her own account, and that she had constituted herself approximately in 1940 as a trustee for her brothers. However, at no time was there any relationship back to the date of these

(Testimony of Ralph Cebrian.)

deeds. I think there will be some evidence on that subject.

The Court: Was that practice as engaged in affirmed by the Treasury Department in connection with the accounting practice?

Mr. Sooy: I have no personal knowledge. So far as we know, that situation prevailed, because she filed a claim, of having paid excessive taxes from 1935 to 1939.

The Court: She filed a claim against the estate of Isabelle, and that, I assume, was allowed?

Mr. Sooy: It was allowed and paid.

The Court: Was there any discussion during the course of these negotiations looking toward either the establishment of a trust or the conveyance of the property in question to your two sisters as a result of the joint operation of the deed on the part of yourself and your deceased brother? Were there any discussions concerning the existence of an obligation on the part of your deceased brother arising out of the note which is now the subject of this suit?

The Witness: No, your Honor. I never discussed that note.

The Court: Did you know of the existence of that?

A. No, I do not know of it. [48]

Q. When did you first learn of the existence of it?

A. Recently when this thing started. I didn't know about it until now.

(Testimony of Ralph Cebrian.)

Q. (By Mr. Sooy): Mr. Cebrian, after the initial deeds were made in March of 1935, were subsequent conveyances made by yourself and your brother, Mrs. Koch and her husband, to Mrs. McCormick?

A. I just deeded the one time. In 1935 I deeded my half, and it was clear. She bought the property and that was that. I didn't have any more exchange of deeds with her.

Q. When did you close up the office which you and your brother maintained here?

A. In 1935, as close as I can remember.

Q. How old was your brother when he died, Mr. Cebrian? A. 62.

Q. Where was your brother living at the time you had the conversation with him on Bush Street in 1938?

A. At the Palace Hotel in San Francisco.

Q. Do you recall receiving a communication at your brother's office from your brother Edward Cebrian in Kentucky regarding his registration for the census.

A. Yes, I recall that very plainly. In 1930 he was in Kentucky, and he couldn't be here when the census was being taken, and he wrote a letter to the office asking—saying he would not register in Kentucky but he wanted us to register [49] him in San Francisco.

Q. That was for the census?

A. The census.

Q. Do you still have that office?

(Testimony of Ralph Cebrian.)

A. No, sir.

Q. Where was that letter kept?

A. When we gave up the office most of the files were taken to Octavia Street, my residence. When I disposed of the residence they were destroyed. We couldn't keep it all, had no room for it, no place to keep it.

Q. You do not now have that letter?

A. No, I have no correspondence from the office at all. [50]

* * *

Mr. Hoppe: I certainly will, your Honor.

The Court: When and under what circumstances, Mr. Cebrian, was there a reconveyance made to you of the Yolo properties?

A. In 1944 when my sister told me she had created this trust——

Q. Was this Josephine?

A. Josephine McCormick—she showed me what she had advanced, all these taxes, and so forth. She presented a bill for that, we might say, and I paid her then for my share one half of those amounts with interest at five per cent, and she reconveyed the property to me.

Q. Was it an undivided one half interest?

A. Yes, your Honor.

Q. What became of the undivided one half interest?

Mr. Sooy: One half went to Mr. Cebrian and one half went to his brother's estate.

The Court: One half went to the estate?

(Testimony of Ralph Cebrian.)

Mr. Sooy: Yes. Those deeds to the heirs are in evidence. [51]

The Court: And then the heirs at laws of the late Mr. Cebrian succeeded to the property in question as a result of probate proceedings.

Mr. Sooy: That is right. I might point out that conveyance was not made until several years after Edward died until a number of claims were paid.

The Witness: Oh, yes. I did not mean to say in 1944 the reconveyance was made. It was later. It was 1948 or 1949. It was four or five years later, because I didn't have the money. If I had been able to purchase—if I had had that money then, I would have done so at the time, but it remained under the trust until I was able to buy my share and also the estate.

The Court: You might work out the chronology of that probate proceeding in some fashion so I will have it before me. Was statutory notice to creditors given?

Mr. Sooy: Oh, yes. This estate is still open. We have been active all these years in selling property and paying claims.

The Court: Of what did the assets of the estate consist?

Mr. Sooy: At the time of the death it consisted of 80 acres adjoining the Cuyana Rancho.

The Court: Free and clear, was it?

Mr. Sooy: It was free and clear. For some rea-

(Testimony of Ralph Cebrian.)

son it did not get under the mortgage to the Hibernia Bank. [52]

The Witness: The taxes were not paid on those 80 acres, either. The taxes were delinquent, the same as in Caledonia.

Mr. Sooy: That land, it is our contention, was absolutely valueless until oil was discovered in the Cuyama Valley in 1948, and the other interest was the one half beneficial interest in the Caledonia Farms.

The Court: What was the appraised value of the land in the inventory of this estate?

Mr. Sooy: \$112,000.

The Court: Prior to the discovery of oil?

Mr. Sooy: Oh, \$200 was the value of Cuyama, and all the rest of that was the value of Caledonia.

The Court: And oil has since been discovered. That is in the Cuyama Valley?

Mr. Sooy: Yes, oil has been discovered but not on this particular property, unfortunately.

The Witness: Your Honor, oil has been discovered in the Cuyama Valley and on this 80 acres there have been two dry holes, two dusters. [53]

* * *

Direct Examination

(Continued)

Q. (By Mr. Sooy): Mr. Cebrian, were there in any paintings in your father's estate?

A. Yes, sir.

(Testimony of Ralph Cebrian.)

Q. Were those bequeathed to his sons and daughters? A. Yes, sir.

Q. Did your brother Edwin Cebrian receive any of those paintings? A. He did.

Q. Do you know how many?

A. Two of them.

Q. Were the paintings which Edwin Cebrian received old masters, do you know?

A. Well, in the family we considered them old masters.

Q. Were they ever appraised by art collectors?

A. No, sir. [54]

Q. Do you know what the paintings were appraised for in your father's estate?

A. Very small amounts—\$25, \$30, and I think the highest was \$50.

Q. Mr. Cebrian, did you ever meet Mr. Charles J. Colville, the plaintiff in this action?

A. Yes, I did.

Q. When did you meet him?

A. I met him in October, 1950, in Los Angeles.

Q. Do you remember the date?

A. The twelfth.

Q. Where did this meeting take place?

A. At the Biltmore Hotel.

Q. Who was present?

A. Myself, I. Lee Burch and Mr. Colville.

Q. No one else, just the three of you?

A. Just the three of us.

Q. Did you have a conversation with Mr. Colville at that time? A. I did.

(Testimony of Ralph Cebrian.)

Q. Will you tell the Court, please, what conversation was held at that time between you?

Mr. Hoppe: Will you tell us who said what and what you said, the exact words as well as you can remember it?

The Witness: I will try to, sir. I had been down [55] to Los Angeles over the holiday of the 12th, Columbus Day. I was down there with my wife and a nephew of hers. We had been to Europe, and this man came back with us. He was going to attend school in San Francisco to learn English.

Mr. Hoppe: Please the Court, we move to strike that. I would like the conversation to be the conversation that existed between the parties rather than what this witness was doing there.

Mr. Sooy: He is explaining the circumstances of being there.

The Court: It is a preliminary observation. It can't possibly do anyone any harm.

Q. (By Mr. Sooy): Will you state the conversation, Mr. Cebrian, that you had with Mr. Colville at that time?

A. We were in the room and Mr. Colville told me that he was a searcher of records, and that he had searched the records of the proceedings that my brother Edward had gone through in the Frazer—under the Frazer-Lemke Bill, and that he had a stack of records.

Mr. Lee Burch interrupted and said, "Ralph, that is why I wanted to take you to Mr. Colville's house,

(Testimony of Ralph Cebrian.)

so you would see these records that he has got from this hearing, and so forth.”

I answered, why, I had no business going to Mr. Colville's [56] house. I have no interest in going there and I believe he had all these records.

Mr. Colville then he was a searcher of records. He pulled out of his pocket a photostatic copy of a check in six figures. He did not hand it to me. He *waived* it and said it was from the Shell Company. They had paid it. He used a profane phrase, saying, “That is why they wanted me.”

And he said, “There are going to be others to join in that parade.” I just listened. He never asked me to join him or anything like that. I think he was trying to draw me out.

And then he told me that in searching the records he had gone to Kentucky and found this note that he bought from the bank in Kentucky. This note had been written off by the bank as a loss, and that he had paid \$500 for the note and had an agreement with them that he would like to have half of what he could get back on the note when he collected it.

And then he told me, he said, “Mr. Cebrian, if you try to pay this note now, or offer to buy this note from me now,” he said, “I will walk out the door.” That is the sum and substance of what was said.

Q. Did Mr. Colville say whether or not he had examined the pleadings in the Los Angeles Probate Proceeding? [57]

(Testimony of Ralph Cebrian.)

A. Yes, he said he had examined them and that he had searched all of those records and got all this evidence that he had, and, well, he was going to upset that and for his own profit he would get the ranch back.

Q. Do you recall whether or not Mr. Colville told you at that time that he had also searched the records in the San Francisco Probate Proceeding in connection with your brother's estate?

A. Yes, he mentioned he searched high and low, everything connected with this proceeding.

Q. Do you recall whether or not he said he had also looked at the records or your father's estate here in San Francisco?

A. Yes, he told me that, and not only that, he told me he had come to San Francisco and he knew where I lived, he had seen the house; he searched every place and found out everything to his satisfaction, and he was going to upset the proceedings.

Q. Did he tell you how long he had been searching these records?

A. I don't remember that he did, but he did tell me that he had been searching them, that he employed, I suppose, attorneys or other searchers. He did tell me that.

Q. Did he tell you what his plans were in connection with the Cebrian family and its affairs [58]

A. No, sir, not to me.

Mr. Sooy: Cross-examine.

(Testimony of Ralph Cebrian.)

Cross-Examination

By Mr. Hoppe:

Q. Mr. Cebrian, I would like to take your mind back to 1932, 1933 and 1934, that general era. At that time you and your brother Edward owned the Caledonia Farms together, is that right?

A. Yes, sir. We owned it from March, 1930. My father made a present of it to my brother Edward and myself.

Q. And that farm had been in the family for many years?

A. Since 1919. I think my father bought it in 1918 or 1919 around in there. [59]

* * *

Q. (By Mr. Hoppe): Did you know at the time you owned that property that your brother Edward had executed the note to Mr. Barbee in 1932?

A. No, sir, I heard of the note just now.

Q. Was the first time the first time you had any knowledge whatsoever of that note?

A. Yes, sir.

Q. In 1932—I know nothing about the value of farm lands—what was that property worth about in 1932?

A. I can only guess at that. I don't know.

Q. You have no opinion? A. No, sir.

Q. Were farm lands in 1932 in the Sacramento Valley at the low ebb in the depression as they were in other parts of the country or do you know that?

(Testimony of Ralph Cebrian.)

A. I imagine they were. It was a [60] depression.

Q. Do you recall that in 1934, on August 20th, that your brother Edward filed proceedings under the Frazer-Lemke Act?

A. I know he filed under that act, yes.

Q. Did you become a party to those proceedings?

A. I did not.

Q. Did you file a claim in those proceedings?

A. No, sir.

Q. Did you file a claim of any character whatsoever? A. No, sir.

Q. Did you sign any papers in that proceeding?

A. I don't recall signing any papers. I do not see that I would have to. I was not a party to them.

Mr. Hoppe: At this time, Your Honor, I have this voluminous file. I am not going to offer it in evidence. I am going to offer certain pages in evidence. But I would like to have this identified as plaintiff's exhibit next in order. The document is a certified copy of the complete file in the matter of Edward Cebrian, Bankruptcy Case No. 23755-C, as of March 3rd, 1951.

* * *

The Court: Mark it for identification.

(Whereupon file referred to above was marked Plaintiff's Exhibit No. 22 for [61] identification only.)

Q. (By Mr. Hoppe): Mr. Cebrian, I call your

(Testimony of Ralph Cebrian.)

attention to a document numbered 39 in these proceedings, entitled "Proof of Death and Letter of Attorney——"

A. Is that the estate of my father?

Q. This is the bankruptcy estate?

A. Oh.

Q. And I ask you if that is your signature?

A. Yes, that is my signature. May I know what the document is, please?

Q. Yes. We will look at the document now and see if it refreshes your recollection that you did file some papers.

A. Undoubtedly I did. I didn't remember this. This was from my father's estate, that my brother owed the estate \$80,000. Is that the document?

Q. I believe it is \$34,192 plus \$1,168.77.

A. Yes. That I remember now, perfectly. I certainly did. My brother owed my father's estate that money, and that had to go into those proceedings, and so it was done legally and my attorney advised me to sign and I did.

Q. Did you sign any other papers in that estate?

A. I don't remember; It is so many years ago I don't remember. If you show them to me I will tell you whether I signed them or not.

Q. I call your attention to a document numbered 46 in [62] this volume.

A. That is my signature, signed also. That is when I was attorney in fact for my father in San Francisco and I signed this in that connection. What is this document, please?

(Testimony of Ralph Cebrian.)

Q. This is a certified copy of the entire file in those proceedings.

A. That particular document that I signed—

Q. That particular document was the stipulation dismissing the bankruptcy proceedings. Take a look at it and see if it refreshes your recollection.

A. \$450,000 paid to the bank, so forth.

Mr. Hoppe: If it please the Court, the plaintiff offers in evidence at this time the following pages from plaintiff's Exhibit 22 for identification. We offer in evidence the petition of the debtor farmer in proceedings under Section 75 of the Bankruptcy Act, consisting of two pages.

We offer in evidence Page 1 of Schedule A listing the taxes which were payable against this Yolo County property at that time.

We offer in evidence the page entitled "Creditors Holding Securities," showing the amount of the reclamation district charge against the Caledonia property.

We offer in evidence Schedule A (3), creditors whose [63] claims are unsecured, showing the date, note to John Barbee, Lexington, Kentucky, dated November 15, 1932.

We offer in evidence the oath to schedule A, signed by Edward Cebrian.

We offer in evidence a statement of all property of bankrupt, Schedule B (1) real estate, listing the value of the half interest in the Yolo County property at \$55,000.

(Testimony of Ralph Cebrian.)

We offer in evidence the oath to schedule B and ask leave to take photostats so that the original will not encumber the record.

We also offer in evidence the claim which the witness has just identified, "The Proof of Death and Letter of Attorney," which is marked Document 39, comprising seven pages, and ask that we be permitted leave to withdraw the document and take photostats and substitute them in lieu of the originals.

And we offer in evidence a stipulation for an order confirming the plan of settlement and for order of dismissal, Document 46, consisting of three pages, and ask leave to withdraw them and put in the originals. I mean put them in place of the originals. [64]

* * *

The Court: The documents may be marked.

(Whereupon the documents referred to above were marked Plaintiff's Exhibits 22-A to 22-I, inclusive, and respectively, in Evidence.)

Q. (By Mr. Hoppe): Mr. Cebrian, you recall that in January, pursuant to that stipulation that you and your brother entered into, that the Frazer-Lemke proceedings were dismissed, is that right?

A. Yes.

Q. Following that, you and your brother continued to own the Caledonia Farms until you transferred title to your sister, is that right?

A. Yes. [65]

* * *

(Testimony of Ralph Cebrian.)

Q. At the time that * * * the deed to Mrs. Koch was executed by Edward Cebrian, on March 21st, 1935, were you present at any conversations that Edward Cebrian and your sister Isabelle had concerning that whatsoever?

A. I don't remember. I may have been, and there were so many conversations. I don't remember which particular conversation you refer to. We were in conference, the two sisters and the two brothers, many times.

Q. Do you have any present recollection of any conversation between Edward Cebrian and your sister Isabelle Koch concerning that deed?

A. Certainly. I am just telling you. We had conversations, the four of us, and my brother-in-law present, my brother-in-law Mr. McCormick, because he represented—he did most of the work for myself—my sister was not a business woman. She was present, but he took care, and we had many [69] conversations of what was required. This thing was a friendly, brotherly arrangement.

Q. I repeat, Mr. Cebrian: do you have any present recollection of any conversations between Edward Cebrian and Isabelle C. Koch? Let us forget about Mr. McCormick and about any of the others. I am talking about a conversation that you heard between Edward Cebrian and Isabelle Koch. Do you have any present recollection of it?

A. I don't remember any.

Mr. Sooy: He says he doesn't remember.

(Testimony of Ralph Cebrian.)

Mr. Hoppe: I am trying to get an answer to my specific question.

The Witness: That is as far as I can tell you. I cannot remember anything like that. I don't know what you are aiming at, what your purpose is. If you have something there, refresh my memory and I will tell you if it is correct or not.

Q. Is your answer then no?

A. It is neither no nor yes. I don't remember.

Q. You do not remember any specific conversation?

A. No, the way you ask the question, I don't remember.

Q. Regardless of how I phrase the question, do you have any memory whatsoever of any conversations between Edward Cebrian and Isabelle Koch?

A. I give you the same answer, sir. I repeat my answer. [70]

* * *

Q. (By Mr. Hoppe): Following of the filing of this Foster action—I am just doing this for timing—you finally transferred the family homestead to Louis Cebrian, is that right?

A. That is correct. May I explain this? [72]

Q. You can explain on redirect. I would like to have you limit your answers to the questions.

A. All right.

Q. As a part and parcel of that transfer to Louis Cebrian, you settled your controversy with Mr. Foster, did you not?

A. Yes, in part.

Q. In part? A. Yes.

(Testimony of Ralph Cebrian.)

Q. On the basis of that settlement, you later filed a claim against the estate of Edward Cebrian for \$7,500, did you not?

A. Yes, half the amount.

Q. Half the amount? A. Yes, sir.

Q. So you settled the controversy with Mr. Foster for \$15,000, or your brother Loui—

A. Part payment was \$15,000, and then it was an understanding that Loui and Edward and myself that Edward, naturally—this note that they were—this deficiency that we owed him, half was Edward's and half was myself, and Edward said, "Whenever I have money I will pay you whatever—the half of what you advance."

The house was taken for \$15,000. Therefore Edward owed me \$7,500. [73]

Q. And you filed a claim against the estate?

A. Yes.

Q. That is the estate of Edward Cebrian?

A. And I collected it with interest.

Q. Upon the death of your father in 1935, you were appointed the executor of your father's estate, were you not? A. Yes, sir.

Q. And as executor of your father's estate you prepared accounts in that proceeding, did you not?

A. I did. [74]

* * *

The Court: It was an apartment that he occupied down there?

A. It was a rooming house.

Q. I asked you yesterday why you never com-

(Testimony of Ralph Cebrian.)

municated with your brother during that long absence.

A. He didn't write letters. He was a man who would dictate in the office. When he had a secretary he would dictate business letters, but family letters, he wrote very, very few. When he was away in Kentucky, when my father and mother were alive, he would not write. My mother would write to him and they would ask us to write to him. He would send a telegram, "I am fine. I am not writing because I am well." Just a telegram to his father and his mother.

When my father was in Europe, he wrote very few letters to him. I wrote to my father. I was my father's alter ego in San Francisco and I wrote to him every week. I would receive letters from my father, "What about Edward? He doesn't write." He just was not a social correspondent. He wrote very few letters in his lifetime, and there was no occasion for him to write to me.

When he was with my sister Isabelle, she wrote to me but he didn't write. That was his way of being. He was [79] an old bachelor. He had set ways, and that was that. That is the only way I can explain it. But there was the friendliest of feeling, brotherly feeling. While he was at the Palace Hotel in San Francisco and was at the home, before I left it—it was an old home, a twenty room home that had a laundry—he would bring his laundry from the Palace Hotel, his socks, underwear, handkerchiefs, and they were washed on Oc-

(Testimony of Ralph Cebrian.)

tavia Street. The Palace Hotel was a dormitory. We had the friendliest, the most brotherly relations. We disputed, yes. We had arguments like brothers will. But never anything serious. And this man is trying to put a thing here that is absolutely untrue in trying to make it out of whole cloth.

* * *

Q. (By Mr. Hoppe): During your handling of the affairs of the estate of your father, you filed an account? A. I did.

Q. And in that account you asked that a one-half interest in certain oil well royalties that your brother thought he might have coming to him off the Cuyama be deemed an asset of the estate?

A. I think you are misrepresenting that. As I remember, [80] I think we had several wildcatters, while I owned the ranch that he gave leases to. I naturally owned half of that lease, the royalties. I don't remember asking him to give me his royalties. I didn't have to ask him, I don't think. I don't know.

If you have something there, show it to me.

Q. You also in the final account asked to have the paintings, the family portraits, turned over to you, did you not?

A. My father's will bequeathed to me the home and its contents, and the paintings were in the house. Therefore my father gave me the paintings and everything. The furniture was bequeathed to me. I didn't ask him for anything.

(Testimony of Ralph Cebrian.)

Q. And in the final account, you asked that the paintings be sent over to you, did you not?

A. Everything was sent over to me. [81]

* * *

Mr. Hoppe: Is your answer to that question "Yes"?

A. Yes.

Q. In your final account you asked that your brother Edward be ordered to give a note to the estate for something in the neighborhood of \$90,000, did you not?

A. Yes. And let me explain that. That was understood by all the brothers and sisters, by my brother Edward, that he had received—my father had loaned him this money. The notes were in the bank and signed by Edward are my father's securities as collateral, and he knew it, and in a friendly way, in a brotherly way he said, "Yes, I owe you this money, and in order to make it legal—" that I don't know anything about—the note was signed. He demanded it, sure, because the legal terminology is "demand," but he gave it willingly. There was no fight, no dissension, nothing. Those were the facts. We had to pay the notes at the bank. They were signed by my brother and the collateral being in the estate of my father, it was very simple.

Q. Did your brother object to your demands to execute the note?

A. He did not object. He was in the conference. "Is this [82] the proceeding, for me to give a note?"

(Testimony of Ralph Cebrian.)

“Yes.”

He gave it. There was no discussion.

Q. Did he object to the fact that you wanted the oil paintings?

A. The oil paintings were in dispute—I mean in discussion, this way, that the family felt that he was getting too much, that at least the paintings should be divided, and in a friendly way we decided to divide the paintings. The paintings were in my father’s estate, and my father left the home and its contents, and then I willingly—we made an arrangement, and there weren’t enough paintings to go around in equal manner. We drew lots. Some got three paintings, others got two paintings—friendly, brotherly, understanding. There was no discussion.

Q. Did your brother dispute your claim to half of the oil royalties?

A. No. I don’t understand what you mean by that. I don’t know what oil royalties you are talking about. We never received any oil royalties.

Mr. Hoppe: I will ask the Clerk to mark this document. [83]

* * *

(Whereupon the document referred to above was marked Plaintiff’s Exhibit No. 23 for Identification only.)

Mr. Hoppe: Mr. Cebrian, I hand you a document entitled “Exceptions to second account of executors and to the report of executor accompanying said

(Testimony of Ralph Cebrian.)

second account," and ask you if you recognize that signature. A. I do, yes.

Q. Is your memory now refreshed sufficiently to tell us whether or not those objections or exceptions were filed in that estate?

The Court: Is that an agreement for the division of the royalties?

Mr. Hoppe: This is a document in which Edward Cebrian excepted to Mr. Ralph Cebrian wanting the oil paintings and wanting half of the oil royalties and wanting him to sign a note. He said they were not entitled to any of that. The royalties were his. He was entitled to his [84] share of the paintings.

The Court: Up to and including the sale of the old family home which you maintained, did you keep and maintain the several rooms and photography gallery your brother had maintained prior to his departure?

A. No, those rooms were his, and he had the key to those rooms, and I never interfered with that. When I moved out of the house in March those rooms were locked, and then he came after the rest of the house was vacated and took out his things. I had keys to these rooms, also, and one morning when he was at the Palace Hotel there were some records he wanted in his business and he asked me to bring them up. I opened the door, got the letters he wanted, locked it, and took them back. It was a friendly relation with those rooms, and

(Testimony of Ralph Cebrian.)

there was never any discussion with him about those, your Honor.

This is a document that was filed by my brother Edward after the probate proceedings. The regular way that was done, it was presented in court. He refers here to oil royalties. I will explain that. In 1919 my father gave the Cuyama Ranch to his four sons, and he drew up an agreement that if oil was ever discovered on the ranch, he retained half of that oil. The four brothers signed that agreement. The agreement was never, I don't think, recorded. It was just an understanding. In the [85] agreement there was a clause that if this agreement interfered with the sale of the property, it would be null and void. It would be in different terms, but that was the intent.

Now, that agreement had to be mentioned in my father's estate because my brother then filed—he has no oil rights, neither did I have, neither did the family, neither did my father's estate, it was perfectly agreeable—he had to file this under the legal end of it. Now, the indebtedness, he, as I said, he borrowed money at the bank with my father's collateral, with my father's permission, but it was a loan to him.

Now, he contended he tried to—he didn't have a penny, himself. He tried to make it say that that was not a loan, that was a gift from my father. We proved to him it was not a gift, because if it had been a gift, my father would have given him the securities or given him the money. There is a

(Testimony of Ralph Cebrian.)

reference to that here. But there was no fight, no enmity at all between us. It was all done in accordance with the law required. What the attorneys advised to be put in to protect everybody.

Here is a clause down here. I didn't read the whole thing:

“Edward Cebrian does not at this time object to the distribution of the assets of the estate [86] except as to the paintings.”

So with the paintings we had the arrangement that I said before. There wouldn't be distribution to parts of the estate. The paintings came to me, and from me each one got his share by lot, because there weren't enough paintings to go around with an equal number to each one of the heirs. Very simple.

Q. (By Mr. Hoppe): Do you now recall your brother did file objections to the way he wanted to handle the estate?

A. You have them in your hand.

Q. Do you recall when he did file these?

A. Certainly. You refresh my memory now. It was done over the advice of the attorneys in order that there would be no misunderstandings, but there was no friction.

Mr. Hoppe: We offer Plaintiff's Exhibit 23 in evidence, your Honor. [87]

* * *

The Court: I will allow the document.

* * *

(Testimony of Ralph Cebrian.)

Mr. Hoppe: This document was filed on April 20th, 1937, in Probate File No. 69152 in the estate of John C. Cebrian.

(Whereupon the document referred to above was received into evidence as Plaintiff's Exhibit No. 23.)

Q. (By Mr. Hoppe): As part of the distribution of assets of that estate Edward Cebrian, is that right?

A. Certainly, there wasn't nothing for him. He agreed to that. That is what happened—in a friendly agreement or a friendly acceptance of the facts at the time.

Q. Do you know whether Josephine McCormick gave Edward Cebrian any monies for his share of the income from the [88] Caledonia Farms?

A. I do not know, no. She never gave me any, so I don't think she gave it to him either.

Q. Coming back to the present estate, which is the estate of Edward Cebrian, you have a claim on file for over \$13,000 in that case, have you not, in the estate of Edward Cebrian? Have you not filed a claim for \$13,000?

A. I filed a claim for \$7,500, didn't I?

* * *

Q. (By Mr. Hoppe): For one-sixth of the sum of \$56,895.59 plus interest, or a total of \$13,398.99?

A. That is correct.

Q. You have that claim, and you filed a claim for \$7,500? A. Also.

(Testimony of Ralph Cebrian.)

Q. You will also be the recipient of one-sixth of the estate of Edward Cebrian, is that correct?

A. Yes, sir.

Q. Do you know whether any claims were filed by any outsiders of the family of the estate of Edward Cebrian?

A. Yes, my sister Josephine McCormick filed a claim and my sister Isabelle Koch filed a claim.

Q. And any others that you know of?

A. I don't recall any others. [89]

Q. Do you recall of any strangers to the filing claim?

A. No, unless this note, if you have filed that. You would know that.

Q. That was not filed. I understand that you have not spoken to Edward from 1938, when he went to Los Angeles, until the date of his death?

A. No, I did not. He was down in Los Angeles and I never had occasion to telephone to him. I did not speak to him from the time he left here until his death.

* * *

Mr. Hoppe: When did Josephine McCormick die?

The Witness: November of last year.

* * *

Mr. Cebrian: November, 1953.

Mr. Sooy: Do you remember when her husband St. John McCormick died? [90]

Mr. Cebrian: He died four years ago, to the best

(Testimony of Ralph Cebrian.)

of my recollection. I don't remember the date exactly.

Mr. Hoppe: Was Mrs. McCormick ill for quite a while before she died?

Mr. Cebrian: No.

Mr. Hoppe: Her death was sudden?

Mr. Cebrian: Yes. I do not have the particulars of that. She was in the hospital a very short time and died. [91]

* * *

March 10, 1955, 2:30 P.M.

Mr. Sooy: It will be stipulated that the following statement of facts is correct:

On April 21, 1951, plaintiff herein, alleging to be the holder of the note sued on herein, filed a petition in the United States District Court for the Southern District of California, Central Division, in bankruptcy proceeding No. 23755C for the purpose, among other things, of having it declared that said proceeding, which had been filed August 21st, 1934, for a composition or extension under the then Section 75 A to R of the Federal Bankruptcy Act were still open. Process was served upon your client, who was the defendant, Isabelle C. Koch, as Administratrix of the estate of Edward Cebrian, alias, deceased, and she appeared therein by joining him in a motion to dismiss said plaintiff herein, Charles J. Colville. After the law was exhaustively briefed and the matter was tried and argued before the referee, David B. Head, the referee made an order

dismissing the petition of Charles J. Colville, and upon review of said order taken by Charles J. Colville, Judge William C. Mathes did on September 25th, 1952, confirm the order of Referee David B. Head. * * * It was also found that [92] said bankruptcy proceedings had been dismissed on January 17th, 1935.

* * *

Mr. Sooy: * * * I will now offer in evidence, if your Honor please, a certified copy of the Register of Actions in connection with the San Francisco Probate Proceeding No. 98563, the estate of Edward Cebrian, deceased.

* * *

The Court: It may be marked.

(Whereupon documents referred to above were received into evidence and marked as Defendant's Exhibit C.)

Mr. Sooy: I now offer, if your Honor please, a certified copy of a creditor's claim filed by Joseph C. McCormick in the matter of the estate of Edward Cebrian pending in [93] San Francisco in the amount of \$821.20, said claim having been approved by the administratrix and by the judge of the San Francisco Superior Court.

* * *

The Court: It may be marked.

(Whereupon document referred to above was received into evidence and marked as Defendant's Exhibit D.)

Mr. Sooy: Will you mark that D-1, please?
There will be four parts.

(The document referred to was thereupon
marked Defendant's Exhibit D-1.)

Mr. Sooy: I offer now creditor's claim filed by
Josephine C. McCormick in the matter of the estate
of Edward Cebrian, pending in San Francisco, in
the amount of \$6,350. Such claim was approved by
the administratrix and by the court.

The Court: It may be marked.

* * *

(Whereupon document referred to above was
received into evidence and marked as Defend-
ant's Exhibit D-2.)

Mr. Sooy: I offer now a creditor's claim filed in
the matter of the estate of Edward Cebrian by
Josephine C. McCormick in sum of \$4,056.69, which
claim was approved [94] by the administratrix and
by the court.

* * *

The Court: It may be marked.

(Whereupon the document referred to above
was received into evidence and marked as Plain-
tiff's Exhibit D-3.)

Mr. Sooy: I offer a fourth creditor's claim filed
by Josephine C. McCormick in the matter of the
estate of Edward Cebrian in the sum of \$1,669.77.

* * *

Mr. Sooy: That claim was also approved both by the administratrix and by the court.

(Whereupon the document referred to above was received into evidence and marked as Defendant's Exhibit D-4.)

Mr. Sooy: I now offer as Defendant's next in order an order for a copy of the record dated December 15th, 1949, certified as correct by the deputy clerk of the San Francisco Superior Court, which shows that some 66 pages from the estate of John C. Cebrian, Probate File No. 69152, were ordered by Charles J. Colville, 10753 Lyndbrook, Los Angeles, 24, and the date the fee was December 15th, 1949.

* * *

(Whereupon document referred to above was received into evidence and marked as [95] Defendant's Exhibit E.)

Mr. Sooy: I offer an order for a copy of record dated April 21, 1950, which shows that the entire files in the matter of the estate of Edward Cebrian were ordered certified, prepared and certified, showing that the order was filed on three dates: April 21, 1950; April 24, 1950, and April 25, 1950.

* * *

(Whereupon the document referred to above was received into evidence and marked as Defendant's Exhibit F.)

Mr. Sooy: I offer a certificate prepared by Martin Mongan, County Clerk, by J. Farley, Deputy,

purporting to show that no claim has been filed in the matter of the estate of Edward Cebrian in San Francisco by any of the following persons, viz: John S. Barbee; Van-Meter Terrill Feed Company; Daylor Van-Meter; First National Bank and Trust Company of Lexington, Kentucky; Charles J. Colville or Wilma Urch Colville, based upon a promissory note of Edward Cebrian, dated November 15th, 1932, or upon any other claim or obligation whatever.

* * *

(Whereupon the document referred to above was received into evidence and marked as Defendant's Exhibit G.) [96]

Mr. Sooy: I will read now from the deposition of Hugh J. Weldon taken in this matter in the city of Santa Barbara on April 23rd, 1953, in the presence of counsel for both parties.

* * *

“Question: I understand, Mr. Weldon, Plaintiff's Exhibit No. 2 for Identification is your correspondence file pertaining to the Edward Cebrian note which is in evidence as Plaintiff's Exhibit—I mean which has been identified as Plaintiff's Deposition No. 1, is that correct?”

“Answer: Yes, that and preliminary matters preceding the execution of this note.”

Mr. Hoppe: May the record show that Plaintiff's Exhibit Deposition No. 1 is now Plaintiff's Exhibit 1 in Evidence.

Mr. Sooy: (Continuing reading.)

“Question: And I understand that you have received all of the letters which are addressed to you, and that you have sent out the originals of the letters which appear to come from you?”

“Answer: That is right. I might say, in office copies I do not add my signature, but I can [97] testify that every letter in there on yellow paper is a carbon copy of a letter of an original which was sent out by me and mailed under my signature.

“Question: Now, Mr. Weldon—the party stipulates, subject to your approval, Mr. Weldon, that your file, which is marked Plaintiff’s Deposition Exhibit No. 2, may be forwarded to the clerk of the Federal District Court for the Northern District of California, and that counsel for the respective parties may thereupon then file, have photostatic copies made of such documents as they choose to offer in evidence at the trial of this cause, and obtain an order of the court returning the original exhibit to you as soon as the protostatic copies are made; is that agreeable to you?”

“Answer: Entirely agreeable.

“Mr. Hoppe: Is that our stipulation?”

“Mr. Sooy: With the further proviso that all photostatic copies of documents in the file shall be attached to and become exhibits to the Weldon deposition in evidence.

“Mr. Hoppe: That is correct.

“Mr. Sooy: So stipulated.” [98]

EDWIN KOCH

was called as witness on behalf of the defendant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your name, your address and your occupation to the Court.

A. Edwin A. Koch, 2090 Pacific Avenue, San Francisco.

Direct Examination

By Mr. Sooy:

Q. What is your occupation?

A. Salesman.

Q. Mr. Koch, you are a husband of the defendant Isabelle C. Koch, are you not? [100]

A. I am.

Q. When were you married?

A. November 23rd, 1925.

Q. Where were you and Mrs. Koch living in 1933? A. 1933 we were in Europe.

Q. When did you return to California?

A. I believe it was December, 1933.

Q. Where did you reside in California when you first returned from Europe in that year?

A. I went to San Jose at first and spent perhaps eight or nine months or a year there.

Q. When you say you went, you mean Mrs. Koch and yourself?

A. We both went to San Jose, yes.

Q. Where did you go after you left San Jose?

(Testimony of Edwin Koch.)

A. We came to San Francisco for a while, and after that we went to the Cuyama Ranch.

Q. When you say "for a while," what do you mean in point of time?

A. I don't remember exactly, but I think perhaps a month or two months we came to San Francisco.

Q. Did you then leave San Francisco?

A. Then we went to the Cuyama Ranch.

Q. That is the ranch that has been referred to here as being in Santa Barbara County?

A. That is correct. [101]

Q. When did you go to the Cuyama Ranch, Mr. Koch?

A. I think it was the end of 1934 or right around there.

Q. How long did you stay there?

A. I was there—we were there until about 1938, the end of 1938.

Q. Do you remember approximately when you left in 1938?

A. I would think it would be in about November, 1938.

Q. Did either you or Mrs. Koch leave the Cuyama Ranch during that period from 1934 to 1938?

A. Oh, yes, we made frequent trips to San Francisco, Santa Barbara, Los Angeles, Bakersfield, many different places.

Q. Did you always make those trips together?

A. Not always, no. Sometimes Edward Cebrian

(Testimony of Edwin Koch.)

and myself made business trips. We were trying to get people interested in putting cattle on the ranch on a percentage basis. We were looking for farmers, for cane farmers, for potato farmers. We were trying to build up a business so we could save the ranch.

Q. Did Mrs. Koch ever leave the Cuyama Ranch without you during that period of time?

A. Oh, yes.

Q. Did you leave the Cuyama Ranch before or after Edward Cebrian did?

A. Mrs. Koch and I left after Mr. Cebrian had gone. [102]

Q. Approximately when did Edward leave the Cuyama Ranch for good?

A. I think he left in March or April, 1938, and I believe we left in about November.

Q. Under what circumstances did you and Mrs. Koch remain at the ranch after he left?

A. The Hibernia Bank had some tenant farmers there on a share basis, and they asked me to stay and look after their interest, to see that they got the proper share of their crops.

Q. Did you do so? A. Yes, I did.

Q. Do you know where Edward Cebrian went when he left the Cuyama Ranch in the spring?

A. He went to Los Angeles. He was interested in saving the ranch. He went down to interest people in buying it. He was in Santa Barbara, he went to San Francisco. He contacted attorneys to see if he could not save the ranch.

(Testimony of Edwin Koch.)

Q. Did he tell you he made those trips for those purposes? A. Yes, he did.

Q. Did he return to San Francisco in 1938 at all? A. Yes, he was in San Francisco.

Q. Do you know where he stayed here?

A. I believe it was at the Palace Hotel.

Q. Did you come to San Francisco during that part of 1938 [103] after he had left?

A. Yes, I did.

Q. Where did you see him?

A. I saw him at the Palace Hotel.

Q. Where did you reside after you returned to San Francisco from the Cuyama Ranch?

A. We came to live at the Fairmont Hotel.

Q. How long did you reside there?

A. We resided there until about two years ago. We moved to a little apartment on Pacific Avenue.

Q. Was Edward Cebrian still in San Francisco when you returned from the Cuyama Rancho for good to make your home here?

A. Was he still in San Francisco?

Q. Yes.

A. I don't remember. I believe he was in Los Angeles but I am not sure.

Q. Are you familiar with Mrs. Koch's financial affairs?

A. Yes, we were very close in our relations.

Q. Did she advance monies from her personal funds to pay the rental due the Hibernia Bank under the lease? A. Yes, she did.

(Testimony of Edwin Koch.)

Q. Do you know approximately how much she advanced?

A. I think it was between \$12,000 and \$13,000, somewheres around there. [104]

Q. Was that by cash or by check?

A. That was by check.

Q. Do you have those checks now?

A. No, we do not.

Q. Have you made a search for them?

A. Yes, we have made a search for them, but when we left the Fairmont Hotel we destroyed a lot of papers that had been accumulating—letters, checks and things we did not think were of any value, and they have disappeared.

Q. Did your wife, Mrs. Koch, prepare and file a claim in Edward's estate based upon those advances? A. Yes, she did.

Q. At the time that claim was prepared, did she have the checks? A. Yes, at that time she did.

Q. Did you ever visit Edward Cebrian in Los Angeles between 1938 and the date of his death in 1944? A. Yes.

Q. On how many occasions, Mr. Koch?

A. I would think perhaps twice a year.

Q. Did he ever come to San Francisco during that same six-year period?

A. I do not recall. I really do not know.

Q. Do you know where he lived in Los Angeles during that period? [105]

A. Yes, his first residence down there was with some friend that had a sort of guest house, and we

(Testimony of Edwin Koch.)

visited on one occasion there, and later he moved over to a Mrs. Melchior's rooming house.

Q. Is that the same Mrs. Melchior who has been referred to here? A. Yes.

Q. And he continued to have to have the room in her house as long as he lived, is that correct?

A. Yes, he did.

Q. Did you visit him at both of those establishments? A. Yes.

Q. Are those the only two places that he lived there, so far as you know?

A. To my knowledge, those are the only two places that he lived.

Q. Did he ever write to Mrs. Koch from Los Angeles during that six-year period?

A. Yes, he did.

Q. Did you see and read the letters that he wrote? A. Yes, I did. [106]

* * *

Q. (By Mr. Sooy): Mr. Koch, do you have the letters that your brother-in-law wrote to Mrs. Koch at that time? A. No.

Q. Have you searched for those letters?

A. Yes, we have.

Q. Where have you searched?

A. We searched all through our trunks and baggage and boxes and everything that we had.

Q. Is it correct that those letters are not in existence so far as you know now?

A. That is right.

(Testimony of Edwin Koch.)

Q. They are not available, is that correct?

A. No, sir.

Q. In those letters did your brother ever refer to his being in Los Angeles, his living in Los Angeles?

A. He wrote three or four letters that I remember in which he said that he was unhappy in Los Angeles and wanted to return to San Francisco. At the same time he was asking for more money if he could get it. But he also made it very clear that he wanted to return to San Francisco and make his residence here.

Q. Did he say so in his letters?

A. Yes, he did.

Q. For what purpose did he ask that Mrs. Koch send him funds? Did he specify? [107]

A. For his transportation. He wanted to come up on the bus. He would come up any way that he wanted to. He said that he was not interested at that time in returning to his old habitat, the Palace Hotel, that he would be satisfied living any place that she could find him a room.

The Court: What was that again? He was not satisfied?

The Witness: He was not satisfied—at first Edward Cebrian wanted to stay in San Francisco and live at the Palace Hotel, and Mrs. Koch did not believe that she was justified in paying his bills and keep in the style to which he had been accustomed. That was the reason she advised him to go to Los Angeles and get away from his friends. He

(Testimony of Edwin Koch.)

was a man who liked to have big parties. He had a lot of friends here. He objected to that at first. He didn't want to go to Los Angeles. But she was the one who was supporting him, paying his rent, spending money, and he finally went down there, but he always, even after that, he always said he would like to come back to San Francisco, even if he could not live in that style.

The Court: Did Mrs. Koch advance him monies necessary for his current expenses?

A. Yes, she did.

Q. He lived in rather circumspective style in Los Angeles, I assume?

A. No, he had a very nominal rent. [108]

Q. Nominal?

A. Yes, yes, and he was working in Los Angeles as a translator. I do not believe he received much of a salary. However, Mrs. Koch had to augment his expenses.

Q. Did he have any means of support other than the advances which were currently made?

A. None whatsoever, sir, except for a while he was employed in Los Angeles.

Q. As a translator? A. Yes, sir.

Q. How old was this gentleman when he passed away?

Mr. Sooy: Sixty-two, your Honor.

The Court: Pardon my interruption.

Q. Was there any bitterness between Mrs. Koch and Mr. Cebrian arising out of the circumstance that he had to go south?

(Testimony of Edwin Koch.)

A. None whatsoever. There was a very close, dear relationship. She loved him like a mother.

Q. (By Mr. Sooy): Were the letters to which you referred, Mr. Koch, typed or in his writing?

A. They were in his handwriting.

Q. Did he send any typewritten letters to his sister during the six years he was in Los Angeles?

A. He did send some typewritten letters, and he sent any number of telegrams and telephone calls. He was a man who evidently hated to write long-hand letters. [109]

Q. Do you know of any practice or custom which he had of making an additional longhand copy of letters which he wrote?

A. That was his practice when he wrote a letter. He would generally make a sketch.

Q. I requested you to search for any letters or documents in his handwriting.

A. I beg your pardon?

Q. Have I asked you and Mrs. Koch—

A. Yes, you have.

Q. Were you able to find any documents in his handwriting? A. No, I have not found any.

Q. Did you find any copy of a letter or letters which he apparently wrote?

A. No, I have not found anything in regard to that. [110]

Q. Did you state when you moved from the Fairmont Hotel to Pacific Avenue?

A. I moved in 1951, in the early part. I think it was April.

(Testimony of Edwin Koch.)

Q. 1951? A. Yes.

Q. Three years ago?

A. No, two years ago. 1952. Pardon me.

Q. Did you and Mrs. Koch ever drive to Los Angeles between 1938 and 1944?

A. Yes, we did.

Q. Did you ever visit with Edward Cebrian in Los Angeles?

A. We always, every time we went to Los Angeles we visited with him.

Q. Did you ever discuss in Los Angeles with Edward Cebrian the question of his living there?

A. He always wanted to come to San Francisco. He always said that he wanted to make San Francisco his home on every occasion that we were down there, and on one particular occasion we had just come from a little trip and our car was full of our suitcases and he wanted to come back that same day with us, and I told him we didn't have room, we didn't have any accommodations in San Francisco for him. So he actually broke down and cried. He had tears.

Q. And can you tell us when that was? [111]

A. I think that was in 1943. I remember that I had been ill and we thought we would take a few days down south and see if it would help recuperation.

Q. I didn't hear you. Who had been ill?

A. I had been ill.

Q. Mr. Koch, did you and Edward Cebrian ever

(Testimony of Edwin Koch.)

have a discussion about finding him employment in San Francisco?

A. He asked me to find employment for him and I tried. I asked any number of friends of mine and I also tried to find him living quarters. I went to the Elks Club and I went to Herbert's Hotel for men on Powell Street, two or three different places to see if we could get something reasonable which was close to what he was paying in Los Angeles.

Q. Were you able to find such accommodations?

A. No, I could not at that time.

Q. During what period of time was that, those conversations?

A. That was in 1943 and 1944 that I tried to find the places.

Q. By the way, on this occasion when you passed through Los Angeles on the return from the trip which you said was in 1943, what was the condition of health of Mr. Edward Cebrian?

A. He was not working that day, and I think the man was really sicker than we anticipated. I thought he was a sort of a baby person. I mean everybody felt sorry for Edward Cebrian. But he was really a sick man.

Q. Did you and Mrs. Koch see him in Los Angeles at any time [112] in 1944 before his death?

A. Yes.

Q. Was he working at that time?

A. Well, not the day that we saw him. I don't

(Testimony of Edwin Koch.)

remember whether it was on a Saturday or not, but I know he was home that day.

Q. You stated that you tried to find him reasonable quarters in San Francisco. Did he ask you to do so? A. He asked me that, yes, he did.

Q. Did he ever tell you that he had decided to make Los Angeles his home?

A. Never. He told me many times that he was dissatisfied there, that his friends, most of his friends lived in San Francisco and he would like to be here and he would like to be near his family.

Q. Were any of the other members of the Cebrian family living in Los Angeles during that period of time? A. No, definitely not.

Q. When Edward Cebrian left the Cuyama Rancho in the spring of 1938 did he tell you whether or not he had abandoned hope of recovering the ranch?

A. Oh, no, on the contrary, he told me about how he was going to get attorneys to instigate proceedings, to start a lawsuit. He was always to me very hopeful that he would save the ranch. He had great hopes for oil. While we lived [113] on the ranch we drilled several holes, drilled several oil holes, and we would get a little indication of oil, then they would light the gas, it would last for three days and then peter out. I mean everybody would become animated to think this was it, nothing would come of it. It was after he left that they had the big oil strike down there.

Q. Judge Harris asked you what the feelings

(Testimony of Edwin Koch.)

were between Mr. Edward Cebrian and your wife and you answered to him. What were the feelings between Edward Cebrian and yourself?

A. Every since I have known him we have been very close.

Q. Was there ever any friction or rancor between you and Edward Cebrian?

A. Never. We visited together many times. We visited in New York one time together. We have always had very pleasant relations.

Q. You were in court this morning, were you not? A. I was.

Q. You heard the testimony about disputes arising out of John Cebrian's estate, did you not?

A. Yes. [114]

* * *

Q. (By Mr. Sooy): Do you recall any conversations between your wife, Mrs. Koch, and Mr. Edward Cebrian about the settlement of Ralph Cebrian's amount?

A. Yes, we talked about it many times. We talked about the paintings, we talked about Edward's note that was owed to the estate. We discussed all angles of Mr. Cebrian's estate.

Q. Did Mrs. Koch join in the objections which Edward Cebrian made to his brother Ralph's accounts? A. I don't exactly know——

Q. Did she join, did she file objections also?

A. Not to my knowledge.

Q. Do you have a real estate license, Mr. Koch?

A. Yes, I do.

(Testimony of Edwin Koch.)

Q. How long have you had that?

A. Oh, I have had a license since 1922 or 1921.

Q. During 1934 and 1935, after you returned from Europe, did you have any discussions with Edward Cebrian about the possible sale of Caledonia Farms?

A. Edward Cebrian asked me to try to find a buyer for the Caledonia Ranch, and I made several trips to Sacramento. I called on several real estate offices and I talked to some of the Ranchers around there, but I could not get any kind [115] of offer on that property at that time.

Q. Did you talk to Mr. A. F. Turner?

A. I talked to Mr. Turner, who had charge of what they called the West Sacramento Properties up there. He was familiar with it. As I remember it, he was also trying to sell it but couldn't get an offer.

Q. Did the brothers have an asking price for the farm at that time?

A. I said, "Ed, how much do you want for this thing?" He said, "Ask \$50,000 but get an offer."

Q. Was that gross or net?

A. That was gross.

Q. Were you ever able to get an offer from the Caledonia Farms?

A. No, I never had an offer. I even tried to trade it at one time for an equity in a building but I could not make that a go.

Q. Did you ever meet Charles J. Colville, Mr. Koch?

A. I met him once in Los Angeles, yes.

(Testimony of Edwin Koch.)

Q. Do you remember when you met him?

A. I believe it was in 1950.

Q. Do you remember the month?

A. No, offhand I do not. I think it was March but I am not sure.

Q. Where did you meet him? [116]

A. He came to see Mrs. Koch and myself at the Gaylord Hotel in which we were staying in Los Angeles. Mr. Burch, Mr. Sooy, Mr. Colville, Mrs. Koch and myself were there.

Q. Was a conversation had at that time?

A. Yes, Mr. Colville came in with Mr. Burch. Mr. Burch we had known for a good many years because he had drilled some dry holes on the Cuyama Ranch, and he introduced Mr. Colville and we sat there, and I asked Mr. Colville his business.

He said, "I am a searcher of records." He said, "I go into estates and see if I can find any flaws in them in order that I might turn them over to my own personal gain."

He said, "I was interested in the Cuyama Ranch as soon as oil was discovered." He said, "I came looking for quail and I found much bigger game."

He said, "I bought a note from a bank in Kentucky, I believe it was, for \$500," and that he was going to try to reopen the bankruptcy proceedings in the Edward Cebrian estate. He said, "I have a stack of photostatic copies that high."

He said, "I have gone into this very, very thoroughly. I have gone into all of the records in Santa Barbara county, San Luis Obispo county, and

(Testimony of Edwin Koch.)

I know about the proceedings that were filed in Los Angeles by Mrs. Koch. I know about the proceedings that were filed in San Francisco. I know about the Caledonia Farms. I know about a horse judgment that was filed I think against the estate." [117]

The Court: A horse Judgment?

The Witness: Yes, sir, there was some judgment that was against Edward Cebrian for feed.

The Court: A feed bill?

The Witness: Or the sale of a horse. We always called it the horse judgment. It was the sale of a horse or a feed bill. I don't know which.

He said, "If you offered to pay this note I would refuse it. I don't want a cent."

Q. (By Mr. Sooy): Did he tell you what his plans were in connection with the Cebrian affairs?

A. He said his plan was to restore the Burch lease. He said the Richfield Oil Company had taken approximately one hundred million dollars out of the Cuyama Ranch, and he was going to restore that lease.

Q. Did he tell you the method he would use to restore the Burch lease?

A. Well, he was going into the bankruptcy proceedings to reopen the case, that he had bought this note for that purpose.

Q. Did you identify I. Lee Burch as one of the lessees from Cebrian brothers, one of the oil lessees?

A. Yes, he was. He had an oil lease at the Ranch,

(Testimony of Edwin Koch.)

and while we lived there he put down two or three dry holes.

Mr. Sooy: You may cross-examine. [118]

Cross-Examination

By Mr. Hoppe:

Q. Mr. Koch, in the bankruptcy proceedings that we are talking about Mr. Colville did actually endeavor to reopen those proceedings, did he not?

A. I think he did, yes.

Q. And your wife, the defendant in this action, appeared in those proceedings to oppose the reopening, did she not? A. That is right.

Q. Your wife has filed claims against the estate of Edward Cebrian for the monies she advanced him, has she not? A. Yes, she did.

Q. She also filed a claim in the estate for some 13,000 odd dollars that Edward Cebrian was alleged to owe the estate of John Cebrian, is that not right?

A. No.

Q. Did she not file such a claim?

A. Oh, that I don't know. The twelve or thirteen thousand dollars that I mentioned was for payment that she had made as rental on the Cuyama Ranch to the Hibernia Bank.

Q. The particular claim I have in mind was a claim for some thirteen-thousand-odd dollars which Edward Cebrian had disputed when they closed the John Cebrian estate. Do you recall such a claim?

A. No, I do not.

(Testimony of Edwin Koch.)

Q. You heard Ralph Cebrian testify that he filed such a [119] claim, did you not?

A. Oh, yes, that was her interest in the debt owed to Mr. Cebrian's estate.

Q. Yes, and she filed a claim for that also?

A. Yes, that is right.

Q. Likewise, Mrs. Koch is an heir of the estate of Edward Cebrian?

A. Yes, of Mr. John C. Cebrian, yes.

Q. And also Edward Cebrian?

A. Yes, she has a sixth interest in the estate.

Q. About how many trips did you say you took to Los Angeles to visit with Edward down there?

A. I would say we saw him perhaps twice a year.

Q. Over a period of about six years; that would be 12 visits? A. Yes, something like that.

Q. Was he working on the days that you went down to see him or did you see him on holidays?

A. That I don't remember. I know on both occasions he was home, and don't think it was on a holiday. I don't remember that. It might have been a Saturday. I am not sure. But he was home.

Q. Going back to the time when you and your wife lived on the Cuyama Ranch, Edward was also living there during that period? The three of you were living there? A. Yes. [120]

Mr. Hoppe: No further examination.

Mr. Sooy: That is all, Mr. Koch. [121]

* * *

Mr. Sooy: If Your Honor please, I would like to inquire. Will the plaintiff offer any rebuttal?

Mr. Hoppe: We have offered our rebuttal. Before closing proofs, Your Honor, I would like to get a stipulation from counsel here that on April 1st, 1948, the appraiser filed the appraisal in the estate of Edward Cebrian showing total assets of \$14 for a refund on a railroad ticket, \$200 on the Cuyama County property we were talking about, \$12,714 on the Yolo County property.

Mr. Sooy: The latter was gross, that is, a gross estate. The Yolo County was \$112,500.

Mr. Hoppe: \$112,500 and the other thing—so stipulated.

Mr. Sooy: It is stipulated that that is the fact, although I object to the materiality of it in this proceeding.

The Court: I will consider it as part of the proof.

Mr. Sooy: Your Honor would have to know what all the claims were.

The Court: That is a gross figure.

Mr. Sooy: That is a gross figure.

Mr. Hoppe: And that the total claims filed in the estate [145] were \$118,702.55, and that all of the claims filed were claims filed by the immediate relatives of the executrix.

The Court: The immediate relatives of the executrix or the deceased?

Mr. Hoppe: The deceased, of course as of August 16th, 1949.

Mr. Sooy: That is the fact. Those are the figures shown in the account.

Mr. Hoppe: And that Isabelle C. Koch's claim for money loaned in connection with the Cuyama Rancho was \$13,573.70, and that in 1938, she gave Edward Cebrian for rent and board \$334.10; in 1939, \$218.75; in 1940, \$590.00; in 1941, \$540.00; in 1942, \$165.00, and then for a period of two years prior to the death of Edward Cebrian, she filed a claim for money loaned to Edward Cebrian, now deceased, by the claimant Isabelle C. Koch, his sister, at the instance and request of the deceased at the rate of \$60.00 per month for a period of two years immediately prior to his death for the care, support, medical care and board and room of the deceased in the amount of \$1,440.00.

Mr. Sooy: It will not be stipulated in the form that you put it. It will be stipulated that she filed two claims with the amounts that you have referred to. However, having prepared the claims I know that those are the only checks that she could find. We filed claims only for checks she exhibited [146] to me. Furthermore, the claim for \$1,440.00, to which we have last referred, was paid. The claim of \$16,471.55, being those advances from 1936 through 1942, were not paid, for the reason that it appeared that the statute of limitations had run, and furthermore, as I said, those are not the only advances made. They do not include any advances made in cash.

Mr. Hoppe: Subject to that limitation we accept the stipulation.

The Court: The stipulation may be noted in the record. We will resume at 10 o'clock.

(Thereupon a recess was taken until March 11th, 1954, when this matter was argued.)

[Endorsed]: Filed April 22, 1955. [147]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint.

Notice and Motion to Dismiss Complaint.

Notice and Motion to Dismiss Complaint or for Summary Judgment.

Plaintiff's Motion for Summary Judgment and Notice Thereof.

Affidavit of Minnie Melcher in Opposition to Pending Motions.

Affidavit of Carl Hoppe with Exhibits A to E Attached.

Reporter's Transcript of Motion to Dismiss Complaint and for Summary Judgment of Jan. 5, 1953.

Order on Pending Motions.

Notice and Motion for Order Setting Aside Order on Pending Motions signed Jan. 23, 1953, and for Rehearing Under Rules 59 and 60(b).

Judgment and Order on Pending Motions.

Order Granting Motion to Vacate Judgment.

Plaintiff's Motion to Modify Court Order Granting Motion to Vacate Judgment Dated Feb. 19, 1953, & Notice Thereof.

Answer.

Order Denying Motion for Modification.

Notice and Motion of Willma Urch Colville, Executrix, to be Substituted for Deceased Plaintiff.

Order Substituting Executrix as Plaintiff.

Order for Judgment in Favor of Defendant. Stipulation and Order.

Findings of Fact and Conclusions of Law. Judgment.

Notice of Appeal.

Cost Bond on Appeal.

Designation of Record on Appeal.

2 Volumes of Reporter's Transcript.

Plaintiff's Exhibits Nos. 1 to 17, Inclusive; 17-A, 18 to 21, Inclusive; 22-A to 22-I, Inclusive; 23, 24 and 26.

Defendant's Exhibits A, B, C, D-1 to D-4, Inclusive, and E to G, Inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 26th day of April, 1955.

[Seal] C. W. CALBREATH,
 Clerk;

By /s/ WM. C. ROBB,
 Deputy Clerk.

[Endorsed]: No. 14741, United States Court of Appeals for the Ninth Circuit. Wilma Urch Colville, Executrix of the last will and testament of Charles J. Colville, Deceased, Appellant, vs. Isabelle C. Koch, individually and as administratrix of the estate of Edward Cebrian, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: April 26, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14741

WILMA URCH COLVILLE, Executrix of the
Last Will and Testament of Charles J. Colville,
Deceased,

Appellant,

vs.

ISABELLE C. KOCH, Individually and as Ad-
ministratrix of the Estate of Edward Cebrian,
Deceased,

Appellee.

STIPULATION RE RECORD ON APPEAL

Subject to the approval of the Court, the parties stipulate as follows:

1. During the course of oral and written arguments, defendant urged the following affirmative defenses before the District Court:

(a) Plaintiff failed to file a claim in the Edward Cebrian probate proceedings as required by Section 700 of the Probate Code.

(b) The cause of action was barred on May 15, 1937, under the four-year Statute of Limitations, Section 337 (1) C.C.P.

(c) The action is barred even if it contains a waiver of statute of limitations under California Borrowing Statute (Section 361, C.C.P.), since all waivers of the Statute of Limitations are void un-

der the laws of Kentucky where the note was payable and any action on the note was barred under the laws of the State of Kentucky.

(d) Plaintiff's cause of action based on fraud is barred by the three-year Statute of Limitations, Section 338 (4), C.C.P.

(e) The final judgment of the San Francisco Superior Court in Probate finding the fact of Edward Cebrian's San Francisco residence is binding in this action.

(f) The laches of plaintiff and her predecessors bars the relief sought.

(g) The law of Kentucky determines the validity and meaning of the "diligence" clause in the promissory note in suit, under Section 1646, Civil Code.

(h) Plaintiff failed to establish title to the promissory note in suit.

(i) The place of contracting was Kentucky.

(j) The place of performance of the promissory note (where payment was due) was in the State of Kentucky.

(k) There is no issue before this Court regarding "constructive trust."

(l) Plaintiff's cause of action is barred under Section 360.5 Code of Civil Procedure, even if the language in the promissory note waiving diligence can be construed as a perpetual waiver of the statute of limitations.

(m) The language in the promissory note waiving diligence in bringing suit does not constitute a waiver of the statute of limitations under either California law or the law of Kentucky where the note was made payable, but has a specific well defined purposed by reason of the special statutory requirements of Kentucky and some other states, not including California, which require diligence in bringing suit against the maker on penalty of losing rights against endorsers and other third parties.

2. Appellant urges only the following errors:

(a) The District Court erred in finding that the note in suit provided for "simple interest" (Finding 10).

(b) The District Court erred in failing to find that Edward Cebrian, at the time of his death, was a resident of the County of Los Angeles, State of California (Finding 11).

(c) The District Court erred in finding that defendant's only reason for filing a Petition for Letters of Administration in Los Angeles was to avoid delay in the event the San Francisco Superior Court should decide that Edward Cebrian was a resident of Los Angeles (Finding 13).

(d) The District Court erred in determining that defendant could and would have proceeded with the Los Angeles proceedings "solely" to meet the contingency set forth in Paragraph "c" above (Finding 13).

(e) The District Court erred in finding that defendant did not intermeddle with the proper probate

of the estate of Edward Cebrian, deceased, either wrongfully or fraudulently (Finding 14).

(f) The District Court erred in finding that the allegations in the Petition for Letters of Administration filed February 10, 1945, in San Francisco, as to the legal residence of Edward Cebrian at the time of his death "were true and correct according to the best information and belief of defendant" (Finding 15).

(g) The District Court erred in finding that no acts of defendant have deprived plaintiff or her predecessors of their right to file claims (Finding 16).

(h) The District Court erred in finding that all of the facts alleged in Plaintiff's Complaint inconsistent with findings 1 to 17 were untrue (Finding 17).

(i) The District Court erred in finding that all the facts alleged in Defendant's Answer inconsistent with findings 1 to 18 were true (Finding 19).

(j) The District Court erred in finding that no act of defendant in connection with the probate of the estate of Edward Cebrian was performed with any intent to deceive, delay, defraud, or mislead creditors of the estate of Edward Cebrian (Finding 20).

(k) The District Court erred in concluding that any suit or action to recover on the note in suit is forever barred by reason of the failure of the holder of said promissory note to file a creditors claim in probate therein within six (6) months

from the date of the first publication of notice to creditors (Conclusion I).

(l) The District Court erred in finding that the plaintiff and her predecessors in interest had constructive notice of the hearings on the defendant's Petition for Letters of Administration in the San Francisco Superior Court (Conclusion II).

(m) The District Court erred in finding and/or in concluding that the Notice of Hearing in the San Francisco petition given by defendant was in the manner required by law (Findings 12 and Conclusion III).

(n) The District Court erred in concluding that the exclusive jurisdiction to administer the estate of Edward Cebrian was in the San Francisco Superior Court (Conclusion III).

(o) The District Court erred in finding that defendant committed no fraud, extrinsic character with respect to the probate proceedings in the matter of the estate of Edward Cebrian either in Los Angeles or San Francisco (Conclusion III).

(p) The District Court erred in concluding that plaintiff is not entitled by law or under the evidence induced under trial of this case to a judgment that defendant is a constructive trustee for plaintiff (Conclusion V).

(q) The District Court erred in concluding that defendant is entitled to a judgment that plaintiff take nothing by her complaint (Conclusion VII).

(r) The District Court erred in failing to enter judgment for plaintiff in the above-entitled action

in accordance with the prayer of relief and in failing to enter findings of fact and conclusions of law consistent with said Prayer for Judgment.

3. Plaintiff shall be required to print the following pleadings only:

(a) The Complaint filed November 6, 1952.

(b) The Answer filed herein on March 2, 1953.

(c) The Order for Judgment in favor of defendant filed on November 10, 1954.

(d) Findings of Fact and Conclusions of Law filed on February 14, 1954.

(e) Judgment filed on February 14, 1955, and entered on February 15, 1955.

4. The plaintiff shall be required to print only those portions of the transcript of the proceedings as are set forth in appellant's Amended Designation of Record filed in this Court on June 8, 1955, and the Clerk is requested to delete from the transcript the portions thereof noted in the appendix accompanying said Amended Designation of Record.

5. Either party shall have the right to refer to the balance of the pleadings, transcript on file herein or the exhibits on file without further and additional printing.

6. No reference to cross-motions for summary judgment, or to issues tendered thereby, or decided, if any, shall be made by either party, nor shall any ruling made by the District Court of Appeals relating to the motions to dismiss or motions for summary judgment be deemed, or construed to be,

determinative of any issue to be raised by either party on this appeal.

7. In the event defendant hereafter determines that some portion of the pleadings or of the reporter's transcript is required by defendant, plaintiff will, upon the written request of defendant's counsel, cause to be prepared and printed a supplemental record containing such matter specified by defendant, within the limitations of Rule 75(e) F.R.C.

8. The itemization of issues and contentions of the respective parties hereinbefore set forth is not necessarily exhaustive, nor shall it be deemed to prevent either party from presenting argument or briefs urging additional points actually presented to the trial court or arising from the pleadings.

9. Each party hereby waives any and all right to contend that the District Court of Appeals committed error in the admission or refusal to admit evidence, oral or documentary, and each party does hereby stipulate that all testimony, documents and depositions introduced into evidence be deemed fully competent evidence.

CARL HOPPE,

/s/ CARL HOPPE,

By /s/ STEPHEN S. TOWNSEND,

Attorney for Appellant.

/s/ CHARLES D. SOOY,

Attorney for Appellee.

[Endorsed]: Filed July 1, 1955.

